# Harassment File

## DA Shell

#### Title IX investigations are increasing. Kingkade 16.

Tyler Kingkade. “There Are Far More Title IX Investigations Of Colleges Than Most People Know”. Huffington Post. June 16, 2016. <http://www.huffingtonpost.com/entry/title-ix-investigations-sexual-harassment_us_575f4b0ee4b053d433061b3d> AGM

The growing backlog of federal Title IX investigations into colleges and universities has now topped 300, but many people, including students at the schools under scrutiny, aren’t aware of those reviews. As of Wednesday, there were 246 ongoing investigations by the U.S. Department of Education into how 195 colleges and universities handle sexual assault reports under the gender equity law. A Freedom of Information Act request by The Huffington Post revealed another 68 Title IX investigations into how 61 colleges handle sexual harassment cases. This puts the total number of Title IX investigations officially dealing with sexual harassment at 315. (Under civil rights statutes, sexual assault is defined as an extreme form of sexual harassment.) But dozens of those Title IX reviews receive no publicity because they don’t specifically deal with sexual assault. If a school is being investigated for allegedly mishandling harassment cases, but not reports of assault, it doesn’t appear on the list regularly given to reporters by the Education Department. Major educational institutions — including New York University, the University of Minnesota-Twin Cities, Georgia State University, Florida A&M University, Rutgers University, Howard University, the University of Oklahoma, Kent State University and the University of Wisconsin-La Crosse — have escaped public scrutiny because Title IX investigations into their actions haven’t been highlighted by the government or the schools themselves.SUNY Broome Community College is under three investigations that haven’t been previously disclosed. The Education Department has no plans to regularly issue a list of cases involving sexual harassment only, an official told HuffPost.

#### AFF creates an ideological landscape where the first amendment will crush Title IX lawsuits. Schauer 15

**FREDERICK SCHAUER [David and Mary Harrison Distinguished Professor of Law, University of Virginia] 56 Wm. & Mary L. Rev. 1613 2015**

It is important to recognize that doctrinal victories often spring from doctrinal losses. As Sandy Levinson observed in what seems like a generation ago, the real question is not so much about which arguments will prevail as it is about which arguments will be treated as "off the wall," frivolous, or ridiculous, and which arguments will not. n91 Once an argument is taken seriously and moves out of the category of being the subject of judicial or public or academic ridicule, the argument has gone some way towards ultimate acceptance. Not every argument that is taken seriously will prevail in the long run, of course. But being taken seriously even in losing often seems causal of being advanced on future occasions, causal of being taken even more seriously on future occasions, and thus causal, in a probabilistic sense, of finally being accepted. That is why it is plausible to suppose that the Supreme Court's refusal to say anything about free speech in its opinion in the verbal workplace sexual harassment case of Harris v. Forklift Systems, Inc., despite the First Amendment arguments made in some of the briefs and some portion of the oral argument, is a more definitive statement of [\*1630] rejection of such claims than explicit discussion of them in the opinion would have been. n92¶ That constitutional arguments are strategic and opportunistic is hardly surprising. That is simply what good lawyers are paid to do. What may be slightly more surprising, especially to international observers, is that in the United States, these arguments are seemingly disproportionately focused on free speech and the First Amendment. An interesting comparative project would attempt to determine whether, for example, Canadian lawyers and clients opportunistically seize on Charter-based equality arguments n93 in the same way that American lawyers and their clients seize on First Amendment-based free speech arguments, at least on the assumption that equality has the kind of political, cultural, and legal resonance in Canada that free speech has in the United States. Similarly, we can ask whether we see a similar phenomenon in Germany, with the culturally important and constitutionally specified right to dignity and right of personality n94 emerging as the principle of choice rather than equality, freedom of speech, or personal liberty.¶ Equally important is the effect of free speech opportunism on the development of First Amendment doctrine. It is one thing to say that lawyers are acting properly, which they are, in seizing on the First Amendment to maximize the likelihood of their clients' success. It is another thing entirely, however, to believe that such opportunism, or the clash of opportunisms, will produce the best overall doctrinal structure or the most theoretically and practically sound doctrine. If one believes, with Lord Mansfield, that the common law "works itself pure," then perhaps the consequences of free speech opportunism can be expected, in the long term, to be for the best. n95 But if, on the other hand, there are reasons to believe that [\*1631] client-centered and case-based litigation may not be the optimal method of developing larger principles of general application, n96 then there is reason to question whether the First Amendment doctrine produced by opportunistic behavior is necessarily or even likely to be the First Amendment doctrine that is produced by methods less dependent on the vagaries and incentives of particular clients, particular lawyers, and particular litigation strategies.¶ IV. THE FUTURE¶ In the world of law schools and legal scholarship, it seems often to be thought that legal arguments grow out of previous legal arguments and decisions, and that legal doctrine is, at least to some extent, self-generating. And I suspect that a quick scan through most (but not all) casebooks would provide much support for this understanding of the growth of the law. But even though it is almost certainly true that existing or emerging legal doctrine plays some causal role in determining which legal arguments will be advanced and which will not, it is a mistake to assume that prior doctrine is the only or even principal causal agent in explaining which legal doctrines are used by whom and when. n97 Legal arguments are made [\*1632] because lawyers make them, and lawyers make them because it is in the interest of their individual or institutional clients to have them made. But clients are typically not interested in legal doctrine or in developing legal principles nearly as much as they are interested in winning. And thus a significant causal influence on the development of legal doctrine has always been the arguments that lawyers see as the ones that will give their doctrine-uninterested clients the best chance of prevailing.¶ The question then shifts, as many of the Legal Realists took pains to emphasize, to what it is that leads lawyers to believe that some arguments will be more likely to succeed than others. n98 In some areas of law, this may be largely a function of doctrine in the narrowest sense, especially when the doctrinal issues are technical, the law is detailed, and the political or ideological valence of the issues is negligible. n99 In other areas of law, the focus on the personal characteristics of the judge, a dimension stressed (and often exaggerated) by Jerome Frank, will be highly predictive. n100 But in American constitutional law, the role of ideological attitudes, politics, culture, and public opinion plays a larger role, whether as a nonlegal influence on legal decisions, as some would maintain, n101 [\*1633] or whether as simply part of constitutional law itself, as others would insist. n102¶ To the extent that this is so, the question then shifts once again, and it is at this point that we can see that the political, cultural, ideological, and psychological resonance of the First Amendment, when coupled with an increasingly receptive doctrinal landscape, will lead good lawyers to strain to make First Amendment arguments more than they would strain to make arguments based on other constitutional doctrines or provisions. n103 And thus Stevens and Entertainment Merchants are best understood as simply reinforcing an existing trend--and making even more plausible, from the perspective of the lawyer n104--arguments that would not have been taken seriously a generation ago. The same also holds true when viewed from the perspective of a judge seeking to avoid reversal or seeking public, media, or academic approval, for here too the increased resonance of First Amendment arguments will have at least some influence not only on which arguments are advanced, but also on which arguments are accepted.

#### Title IX is currently effective against harassment – this dramatically increases access to higher education. **Musil 07**

Caryn Musil, Scaling the Ivory Towers, MS Magazine Fall 2007: The Triumphs of Title IX, <http://www.feminist.org/education/TriumphsOfTitleIX.pdf>. NS

The contrast between her academic landscape and mine could not be more dramatic. And Title IX is the primary cause for the seismic shifts. The law’s impact has been elemental. Not only has it helped eliminate blatant discriminatory practices across educational institutions, but it has helped root out subtler methods of holding women back by closing the gap between men’s and women’s financial aid packages, improving housing opportunities for women students (a lack of women’s dorms was once used to restrict women’s admissions) and combating sexual harassment. Just before Title IX was signed into law, women were underrepresented as undergraduates, at just over 40 percent of all students. And it wasn’t that easy for them to get into those ivied halls. Young women typically had to make higher grades and SAT scores than young men to gain college admission, and often faced quotas limiting the number of women admitted. Once they got on campus, there were few women role models—less than one in five faculty members were women, and a mere 3 percent of college presidents. In some fields, even the women students were barely visible: About 1 percent of master’s degrees in engineering, 1 percent of doctoral dental degrees, and under 2 percent of master’s degrees in mathematics were awarded to women in 1970. The barriers were formidable, and sex discrimination unashamedly open and normative. In the years since Title IX, however, all of those numbers have risen tremendously. Take college enrollment, for starters: By 2005, women students comprised almost three out of five undergraduates, with some of this growth due to increased access for women of color (who have more than doubled their share of degrees since 1977, when they earned just over 10 per- cent). Women have not simply in- creased their numbers in academia, though: They have also moved into fields formerly dominated by men, particularly business and the sciences (see chart on page 45). These are the sorts of fields that lead women into higher-paying jobs after graduation. Bucking the rising trend, however, are computer and information sci- ence, where numbers peaked in 1984 before declining, and engineering and engineering technologies, in which the numbers of women grew and then leveled off. Certain fields have continued to be women-dominant from 1980 until 2005—health professions other than physicians and related inical sciences (currently more than 86 percent women) and education (about 79 percent women), but this isn’t the best news for economic equity, since wages tend to stay low in fields with few men. In graduate and professional schools, too, young women have enjoyed far greater access thanks to Title IX. In 1970, women earned only 14 percent of doctoral degrees, but today earn nearly half. Yet women’s doctorates are still not distributed evenly across disciplines: They range from a low of about 19 percent in engineering and engineering technologies to a high of about 71 per- cent in psychology. The most dramatic gains are in the professional schools. In 1971, just about 1 of 100 dental school graduates were women, while in 2005 that number grew nearly fortyfold. In medical schools the numbers jumped from less than 10 percent to nearly 50 percent, and law school numbers from about 7 percent to nearly 49 percent. There’s been quite a psychological benefit, too. As my older daughter, Rebecca, says of her experience at New York University Law School, “Women were more than half of the students, so sex discrimination was not something we ever worried about. ... It’s not that we don’t think about equality, but that we don’t have to think about it as much because of what’s already been done.” Armed with their professional degrees in medicine and law, women have entered those professions at steadily increasing rates. Yet their numbers—and in law firms, their advancement—still lag behind. In 2006, women made up 33 percent of lawyers but just 16 percent of partners in law firms. Similarly, in medicine only 27 percent of doctors are women, and they’re unevenly spread across specialties, the top three choices being internal medicine, pediatrics and general family medicine. The news is also mixed about women in academic leadership. By 1986 the number of women college presidents had tripled from 1970 to almost 10 percent, and by 2006 reached 23 percent, with a large proportion serving as presi- dents of community colleges. But most of the progress occurred between 1986 and 2001 and now has slowed considerably. Furthermore, today’s presidents re- main much less diverse by race, gender and ethnicity than the students, faculty or administrators who report to them: Only 4 percent of the respondents in a recent survey of college presidents identified as “minority women.” Women also tend to be more qualified and make more sacrifices than men in order to gain leadership; they’re far less likely than men presidents to be married and have children, and significantly more likely to hold an advanced degree. On faculties, women have increased across every rank but continue to move up more slowly than men. In 2006 they accounted for nearly 40 percent of full- time faculty and nearly 50 percent of part-timers. Young women benefit extraordinarily from all these women role models. As my daughter Emily says, “Women professors looked out for me the whole time ... and that is where I got my career counseling.” But women professors are not employed equally across institutional types—they’re just over half the faculty at institutions offering associate degrees, but only 34 percent at doctoral institutions. While women are increasing their numbers in tenure-track positions (nearly 45 percent), they still face the accumulated disad-vantages of sex discrimination over time and represent only about 31 per- cent of currently tenured faculty. “People change faster and more easily than institutions,” explains Yolanda T. Moses, associate vice chancellor for diversity at the University of California, Riverside. While the most blatant violations have been eliminated, Moses argues that the next level of work is even more complicated: “Systems can undermine progress ... and we need to unearth those behaviors that sabotage even our best intentions.” A search committee in physics or engineering, for example, may profess to be seeking more women, but make no efforts to break out of all-men, frequently all- white, networks to identify strong women candidates. These are the sorts of challenges that still remain, yet Title IX has gone a long way toward making campuses more hospitable. By offering legal protection from hostile work and learning environments, it helped draw attention to sexism in the classroom and opened the door for change. The fields of science, tech- nology, engineering and math were among the most chilly toward women, so Title IX helped usher in a period of serious self-study that has led to the adoption of more women-friendly teaching practices and programs, and thus a rise in women taking courses formerly dominated by men.

#### Sexual harassment in the classroom is a result of patriarchal violence that invades academia. Sexual harassment represents an oppressive use of power by professors and kills the participation and success of the harassed. Benson and Thomson 82

Benson, Donna J., and Gregg E. Thomson. "Sexual harassment on a university campus: The confluence of authority relations, sexual interest and gender stratification." Social problems 29.3 (1982): 236-251.

It is precisely this widespread confluence of authority relations, sexual interest and gender¶ stratification which defines the problem of sexual harassment. There is, in other words, a nexus¶ of power and sexualprerogative often enjoyed by men with formal authority over women. Men¶ in such positions can engage in (or "get away with") overt sexual behaviors that would be rebuffed¶ or avoided were the relationship not one of superior and subordinate. They can also discharge selectively the power and rewards of their positions as a means to obligate women sexualy (Blau,¶ 1964).¶ As well as reward and punish women directly, men can manipulate and obscure their sexual in-¶ tentions toward female subordinates. Women learn that the "official" attention of a male¶ superior is often but a vehicle through which he can "press his pursuits" (Goffman, 1977). In¶ turn, what is often mistakenly perceived by men as an unfounded distrust or suspicion of motives¶ has its basis in previous experience with male "helpfulness." Therefore, as Thorne5 suggests, there¶ is an intrinsic ambiguity between the formal definition of the male superior/female subordinate¶ relationship and a sexual one, in which the gender of the woman can be made salient at the in-¶ itiative of the man.¶ Male Authority and Sexual Interest on the University Campus¶ At major universities, student access to individual instructors can be a scarce resource. Faculty¶ members serve as gatekeepers to the professions, yet an institutional priority on research severely¶ constrains the time and energy that they devote to instruction and interaction with under-¶ graduates (Blau, 1973). Moreover, though students are supposedly evaluated according to merit,¶ the teacher's role permits a wide latitude in the degree of interaction and helpfulness granted to¶ individual students. An instructor enjoys considerable discretionary power to provide or¶ withhold academic rewards (grades, recommendations) and related resources (help, psychological¶ support).6¶ As in the workplace, it is usually men who exercise this discretionary power over female univer-¶ sity students. While women now comprise more than half of all college students,¶ faculty-especially within higher ranks and at major universities-are overwhelmingly male.¶ About 95 percent of university full professors are men (Patterson and Engelberg, 1978). Nor-¶ mative requirements for career advancement at competitive universities are based on traditional,¶ male life-cycle patterns and work schedules that are not convenient to many women (Hochschild,¶ 1975).¶ In the past, it has been difficult for women to successfully enter any prestigious and male-¶ dominated - hence, "non-traditional" - field (Epstein, 1970). Social psychological analyses (Med-¶ nick et. al., 1975) have identified some of the barriers still faced by college women seeking such¶ careers. Yet a recent compendium of student responses to a University of California ad-¶ ministrative query about sex discrimination on campus is replete with testimony from male¶ students that female students' sexuality now gives them an unfair advantage in this competition¶ (University of California, Berkeley, 1977). While women allude to numerous sexist remarks and¶ behaviors by faculty which derogate the abilities of women as a group, the male respondents¶ claim that individual women profit from their sexual attributes because male instructors go out of¶ their way to be "extra friendly" and helpful to them. According to the male perception, then, the¶ latitude permitted in the faculty-student relationship works - at the initiative of either instructor¶ or student - to the advantage of attractive women.¶ Some sociologists of higher education view faculty-student sexual exchanges only as women at-¶ tempting to use their sexuality to compensate for a lack of academic accomplishment:¶ Innumerable girls have found that a pretty face and a tight sweater were an adequate substitute for diligence and cleverness when dealing with a male teacher. Some, having been frustrated in efforts to get¶ by on this basis, have pushed matters further and ended up in bed-though not necessarily with an A¶ (Jencks and Riesman, 1968:427n).¶ Similarly, Singer's (1964:148) empirical study of the relationship between personal attrac-¶ tiveness and university grades relies on unsupported conjecture about female manipulativeness to¶ conclude that ". . . the poor college professor is . . . enticed by the female students ... as he goes¶ about his academic and personal responsibilities." In both studies we find the unquestioned¶ assumption that women (unfairly) capitalize on their sexuality in an otherwise meritocratic and¶ asexual relationship.7¶ Our analysis of sexual harassment as the nexus of power and sexual prerogative implies that,¶ from the woman's perspective, the situation is more complex and decidedly less sanguine. Rather¶ than having a unilateral "sex advantage," female students face the possibility that male instruc-¶ tors may manipulate sexual interest and authority in ways which ultimately undermine the posi-¶ tion of women in academia. Because women can no longer be openly denied access to educational¶ and professional training legally, sexual harassment may remain an especially critical factor of¶ more covert discrimination.

#### Gender equality in higher education and the workforce is key to climate science and innovation. **Gender Summit 13**

Gender Summit 3 — North America, Diversity Fueling Excellence in Research and Innovation:

Conference Report, 11/13/13, <https://www.nsf.gov/od/oia/activities/gendersummit/GS3-ConfReport.pdf>. NS

Ms. Jarrett noted that gender equality in STEM is not just a women's issue, but one that affects all scientists and researchers. The incorporation of the gender dimension into research and innovation benefits everyone. Diversity in STEM brings innovation; it drives science forward and benefits society as a whole. She pointed out that GS3 is more than just about women: it is about our societies and tapping into the power of women to unlock the full potential of global communities. If we truly want to champion innovation and expand the capacity for discovery, everyone has to be involved. President Obama’s administration is committed to ensuring that our women and girls are in a position to lead in the future. The President has been quoted as saying, "When women succeed, nations are safer, more secure and more prosperous.”  Ralph Cicerone, PhD [President, US National Academy of Sciences and Chair, National Research Council, USA] emphasized (a) the importance of utilizing the full capacity of creative, talented and dedicated people; (b) the collective responsibility for ensuring that women scientists and engineers flourish and that they are supported and encouraged; and (c) the need to confront existing obstacles along their career paths. He stated that the Academy remains committed to enhancing gender inclusion by supporting the creation of networks around the world, including Africa, Latin America and Europe. Establishing these networks and collaborations promotes the creation of goals and strategies for implementation and an awareness of the efforts of others that can bring value to our own. To underscore the importance of gender incorporation within global research and development, former NSF Director Subra Suresh, PhD [President, Carnegie Mellon University, USA] stated that diversity in education and the workplace accelerates innovation because people have different life experiences that allow them to address the same issue from different vantage points. Diversity fostering global research is becoming more popular. In May 2012 the Global Research Council was established at NSF as a virtual organization to collectively engage in the development of principles governing scientific merit review, research integrity, pathways for open access to publications and data and mobility of researchers. Nearly 100 countries participated in the most recent meeting where the topics included the mobility of researchers, as well as a discussion of strategic planning for collective action in the near future. Wanda E. Ward, PhD [Head, Office of International and Integrative Activities, National Science Foundation, USA] posited that North America stood ready to further integrate and leverage the gender dimension in forging new and transformative discoveries and in fostering a diverse and inclusive scientific community. Importantly, the greater inclusion of biological sex and gender considerations in disciplinary and interdisciplinary frameworks is significant as all nations increase their investments in science and technology. Working collaboratively to ensure that scientific research is beneficial to women and men is a transformative moment for the shifting landscape of the scientific enterprise. This time of collective commitment for gender considerations in science and engineering will be beneficial to society at large as North America embraces the new opportunities of the shifting landscape of science innovation marked by emerging fields of science and the demographic changes of the scientific workforce. Attention was given to the fact that the more than 650 registrants comprised a diverse group of women and men interested in women’s issues, as well as diversity within the group of women who represent every stage of STEM workforce development, advancement and success. Dr. Ward’s presentation highlighted the NSF’s gender considerations in research design and analysis, as well as the Foundation’s emphasis on gender equity in the STEM workforce. This Summit was considered exemplary for engaging women of all backgrounds in imagining future work at the frontiers of science and in realizing their full potential in the scientific enterprise. Additionally, pending the availability of funding, NSF is pursuing four major areas for multinational collaboration: o discovery/frontier research for knowledge generation and translation, o human capacity/talent development and advancement, o institutional transformation in higher education systems and practices and o equity in stewardship activities, such as the merit review process, evaluation and assessment. Across the participating partners, there are compelling examples of individual contributions of women in basic research, as well as in the advancement of applied research within a gender- focused context. There are also success stories of policy changes and transformative practices emanating from the leadership, mentoring and advocacy roles of well-known women scientists and engineers. The shared commitment for framing a multi-national strategy was continued with input from the European Commission, Natural Sciences and Engineering Research Council of Canada, the National Council on Science and Technology of Mexico, and the Human Sciences Research Council of South Africa. Europe is working aggressively to change the workforce environment by encouraging more females to study science and engineering and to go on to research careers.  MarieGeoghegan-Quinn [Commissioner of Research, Innovation and Science, European Commission] stressed that because gender issues are not unique to Europe, it is important to tackle issues jointly. She stated that we need all of our talented scientists working toward research and innovative efforts and that there is no tradeoff between promoting gender equity and excellence in science. She expressed much interest in collaborating with North America. She stressed that it is logical, for both scientific and economic reasons, to work collaboratively to tackle common challenges. She also highlighted Horizon 2020, Europe’s new research funding program, which will champion gender equality in three ways: integrating the gender dimension into funded programs, encouraging balanced participation of men and women on funded research teams and ensuring gender balance in advisory groups and in teams that evaluate applications for funding.  Oldřich Vlasák [Vice-President of the European Parliament] stressed the importance of (a) research and development in future economic growth and (b) investing effectively, given the frequent scarcity of financial and human resources to support research. He stated that both the US and Europe need to invest more and do a better job with regard to human capital: “we can’t afford to waste research talent, which means we should not discourage any part of the population from participating in research and innovation.” Quoting U.S. Secretary of State John Kerry, he said that “no team can ever win if half of its players are on the bench.” Measures to ensure gender equality should be considered an investment in future economic growth, rather than a cost. He stated that “what we pay today will generate returns for the economy as a whole in the medium- and long-term by reducing the ineffectiveness associated with inequality.” The gender imbalances are not a self-correcting phenomenon, and Vlasák encouraged discussions during the third Gender Summit to view these issues as a matter of research potential and social justice. Remarks by Dominique Ristori [Director General, European Commission Directorate General Joint Research Council] focused on the importance of science and society, the latest developments in Europe’s gender equality policy and the European interest in a gender focused multi-national collaboration. He described the motivation and challenges for global research and innovation in the context of climate change, clean energy and the improved health and well-being of all citizens. Ensuring gender balance is a necessary condition for the achievement of the objective of Europe’s 2020 strategy for 75% employment, an objective that cannot be reached without strong commitment to gender equality, he stated.

#### Climate innovations are the primary key to solve warming. **Moniz 15**

Ernest Moniz (U.S. Secretary of Energy), Interviewed by David Biello, Accelerated Innovation Is the Ultimate Solution to Climate Change, Scientific American, 12/11/15, <https://www.scientificamerican.com/article/accelerated-innovation-is-the-ultimate-solution-to-climate-change/>. NS

PARIS—From "clean coal" evangelists to solar power enthusiasts, most experts at the U.N. climate talks here agree that solving climate change means transforming how the world produces and uses energy—and as quickly as possible. Such a transformation would be unprecedented. It would require enormous investments. To help make it happen, the U.S. Department of Energy, which for decades has spent billions of dollars to develop and deploy advanced energy technologies (not always clean), will play a major role in the new "Mission Innovation." The initiative is an effort announced by 20 major countries at the COP 21 negotiations here to significantly accelerate clean-energy improvements. On December 9, Secretary of Energy Ernest Moniz sat down with Scientific American to explain how innovation and transformation might be sped up to meet the climate challenge, which requires a world without carbon dioxide pollution, soon. [An edited transcript of the interview follows.] How do we get to 80 percent cuts in CO2 emissions in 35 years, the Obama administration's long-term goal? And beyond that, to meet a Paris deal that might even require "zero carbon" by then. Obviously, innovation is going to be central. We're very pleased that our French hosts put innovation on the front burner: having Innovation Day, following Energy Day. And of course, the announcement on the very first day by 20 countries, including Pres. Obama, French Pres. Hollande, India Prime Minister Modi and others, of Mission Innovation. Then the Bill Gates announcement on the parallel Breakthrough Energy Coalition initiative. There is no question that the world now understands that innovation is the core to meet the INDCs [national climate action plans, known as "intended nationally determined contributions"]. We've had a lot of cost reduction and innovation and deployment increases. That virtuous cycle has put us in a pretty good spot to meet a 10-year horizon, maybe a 15-year horizon. For sure, as we go to the longer time periods and extraordinarily low levels of greenhouse gas emissions being discussed, we're going to have to keep that going. I just came from a meeting of the Mission Innovation countries. There is a tremendous amount of enthusiasm. The resonance of the Mission Innovation agenda was so great because it largely fits with the directions that so many countries were going in. It's crystallized that—given that a very explicit framework. We are the dog that caught the car. And now we're [laughs] figuring out what to do with the car. Some people argue that we can meet the goal with the technology we already have, whether it be CO2 capture and storage for fossil fuels and nuclear power or more renewables or all of the above, to use a phrase. Others say we really need a breakthrough. You're on the breakthrough side? In some sense, the answer is yes. What we're talking about is this cycle of innovation, deployment, cost reduction. They all go hand in hand. We have seen that explicitly in the last six years. Continued cost reduction in clean technologies is going to be important. And new enabling technologies are going to be important. So, for example, with wind and solar, we still are not at the point where we can have a large scale-up of energy storage. We are still not at the stage where we really have incorporated [information technology, like computers and the Internet] extensively into the energy infrastructure in the way we're going to need. We also have qualitatively new directions to go in. One is the Makani flying wind turbines. Or now the Google X flying wind turbine; it’s so novel that we don't understand exactly how it could have a big, major transformative impact. But it sure looks like it would if it became a widespread technology.

#### Warming leads to extinction – multiple scenarios prove. Roberts ‘13

David Roberts - staff writer for Grist. “If you aren’t alarmed about climate, you aren’t paying attention.” Grist. January 10, 2013. <http://grist.org/climate-energy/climate-alarmism-the-idea-is-surreal/> JJN

There was recently another one of those (numbingly familiar) internet tizzies wherein someone trolls environmentalists for being “alarmist” and environmentalists get mad and the troll says “why are you being so defensive?” and everybody clicks, clicks, clicks. I have no desire to dance that dismal do-si-do again. But it is worth noting that I find the notion of “alarmism” in regard to climate change almost surreal. I barely know what to make of it. So in the name of getting our bearings, let’s review a few things we know. We know we’ve raised global average temperatures around 0.8 degrees C so far. We know that 2 degrees C is where most scientists predict catastrophic and irreversible impacts. And we know that we are currently on a trajectory that will push temperatures up 4 degrees or more by the end of the century. What would 4 degrees look like? A recent World Bank review of the science reminds us. First, it’ll get hot: Projections for a 4°C world show a dramatic increase in the intensity and frequency of high-temperature extremes. Recent extreme heat waves such as in Russia in 2010 are likely to become the new normal summer in a 4°C world. Tropical South America, central Africa, and all tropical islands in the Pacific are likely to regularly experience heat waves of unprecedented magnitude and duration. In this new high-temperature climate regime, the coolest months are likely to be substantially warmer than the warmest months at the end of the 20th century. In regions such as the Mediterranean, North Africa, the Middle East, and the Tibetan plateau, almost all summer months are likely to be warmer than the most extreme heat waves presently experienced. For example, the warmest July in the Mediterranean region could be 9°C warmer than today’s warmest July. Extreme heat waves in recent years have had severe impacts, causing heat-related deaths, forest fires, and harvest losses. The impacts of the extreme heat waves projected for a 4°C world have not been evaluated, but they could be expected to vastly exceed the consequences experienced to date and potentially exceed the adaptive capacities of many societies and natural systems. [my emphasis] Warming to 4 degrees would also lead to “an increase of about 150 percent in acidity of the ocean,” leading to levels of acidity “unparalleled in Earth’s history.” That’s bad news for, say, coral reefs: The combination of thermally induced bleaching events, ocean acidification, and sea-level rise threatens large fractions of coral reefs even at 1.5°C global warming. The regional extinction of entire coral reef ecosystems, which could occur well before 4°C is reached, would have profound consequences for their dependent species and for the people who depend on them for food, income, tourism, and shoreline protection. It will also “likely lead to a sea-level rise of 0.5 to 1 meter, and possibly more, by 2100, with several meters more to be realized in the coming centuries.” That rise won’t be spread evenly, even within regions and countries — regions close to the equator will see even higher seas. There are also indications that it would “significantly exacerbate existing water scarcity in many regions, particularly northern and eastern Africa, the Middle East, and South Asia, while additional countries in Africa would be newly confronted with water scarcity on a national scale due to population growth.” Also, more extreme weather events: Ecosystems will be affected by more frequent extreme weather events, such as forest loss due to droughts and wildfire exacerbated by land use and agricultural expansion. In Amazonia, forest fires could as much as double by 2050 with warming of approximately 1.5°C to 2°C above preindustrial levels. Changes would be expected to be even more severe in a 4°C world. Also loss of biodiversity and ecosystem services: In a 4°C world, climate change seems likely to become the dominant driver of ecosystem shifts, surpassing habitat destruction as the greatest threat to biodiversity. Recent research suggests that large-scale loss of biodiversity is likely to occur in a 4°C world, with climate change and high CO2 concentration driving a transition of the Earth’s ecosystems into a state unknown in human experience. Ecosystem damage would be expected to dramatically reduce the provision of ecosystem services on which society depends (for example, fisheries and protection of coastline afforded by coral reefs and mangroves.) New research also indicates a “rapidly rising risk of crop yield reductions as the world warms.” So food will be tough. All this will add up to “large-scale displacement of populations and have adverse consequences for human security and economic and trade systems.” Given the uncertainties and long-tail risks involved, “there is no certainty that adaptation to a 4°C world is possible.” There’s a small but non-trivial chance of advanced civilization breaking down entirely. Now ponder the fact that some scenarios show us going up to 6 degrees by the end of the century, a level of devastation we have not studied and barely know how to conceive. Ponder the fact that somewhere along the line, though we don’t know exactly where, enough self-reinforcing feedback loops will be running to make climate change unstoppable and irreversible for centuries to come. That would mean handing our grandchildren and their grandchildren not only a burned, chaotic, denuded world, but a world that is inexorably more inhospitable with every passing decade. Take all that in, sit with it for a while, and then tell me what it could mean to be an “alarmist” in this context. What level of alarm is adequate?

# Frontlines

### Hate Speech PIC Add-On

#### Hate speech codes shifts the paradigm and values of the first amendment, which means it prevents opportunism. Delgado and Yun 94

Delgado, Richard, and David H. Yun. "Pressure Valves and Bloodied Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulation." (1994).

In a hundred years, the hate speech controversy may well be the Plessy¶ v. Ferguson128 of our age. In Plessy, the Supreme Court professed to be¶ unable to see a moral difference between two claims-that of blacks to sit¶ in a railroad car with whites, and that of whites to sit in a car without¶ blacks. 129¶ The hate speech controversy features the same sort of perverse neutralism.¶ The speaker claims a right to utter face-to-face racial invective. The¶ victim insists he or she has the right not to have it spoken to him or her. A¶ perfect standoff, just like the railroad car case, one right balanced against its¶ perfect reciprocal.¶ Perhaps because scholars and policymakers realize the hollowness of¶ the neutral principles approach and remember how poorly its predecessor¶ fared in history's judgment, the weight of legal opinion has been slowly¶ swinging in the direction of narrowly drawn hate speech rules. Free speech¶ traditionalists, focusing solely on one value and ignoring what else is at¶ stake, have been fighting a holding action, using four paternalistic arguments¶ for maintaining the status quo. These arguments each assert that¶ even if hate speech controls are constitutional, they are unwise because they¶ would injure the very persons sought to be protected. Each of these arguments¶ is invalid, a thin veneer aimed at rationalizing the current regime.¶ We have shown that these arguments are unsupported by empirical evidence,¶ indeed that the situation is more nearly the opposite of what their¶ proponents maintain. We employed narrative theory and interest analysis to¶ reveal possible sources of these errors, and showed how hate speech rules¶ could be drafted without violating either the letter or spirit of the First¶ Amendment. We closed by exposing the role of hubris in the debate over¶ hate speech rules and cautioning against replicating the mistake of earlier¶ times, one that today appears both willful and indefensible. These two essays, then, ultimately coincide. Society evaluates minorities'¶ demand for hate speech regulation in terms of the current paradigm,¶ namely free speech. Within that framework, minorities are portrayed as¶ asking for an incremental adjustment, a new "exception" to the grand sweep¶ of First Amendment protection. To staunch defenders of the First¶ Amendment, that demand necessarily appears short-sighted: it would¶ reduce the amount of liberty we all enjoy, a reduction that would fall (in¶ their view) disproportionately heavily on the very persons clamoring for¶ protection.¶ But, of course, these arguments can be answered. Minorities may persist¶ in their demands even in the face of paternalistic arguments to the contrary.¶ Now, we must evaluate their claim on the merits, which, in turn¶ requires balancing. But how shall we balance their demand for respectful¶ treatment-for full inclusion in the human community-against our interest¶ in speaking freely (even derogatorily) of and toward them? We argued¶ in the first essay that this feat is practically impossible, because speech and¶ community, liberty of expression and full equality of citizenship, are both¶ linked and in indissoluble tension. There are ways to resolve this tension in¶ the reformers' favor, just as there are arguments to address the casual paternalism¶ of the free speech advocate. Although other western societies have¶ made the adjustment, we are skeptical about the prospects of the United¶ States joining them anytime soon. Free speech, like all marketplace activities,¶ benefits those who are currently life's winners, reinforcing their advantage¶ while enabling them to say to themselves that they won fair and¶ square. Perhaps only the threat of serious social disruption will shake the¶ current complacency, so that in twenty or fifty years we will look upon hate¶ speech rules with the same equanimity with which we now view defamation,¶ forgery, obscenity, copyright, and dozens of other exceptions to the¶ free speech principle, and wonder why in the late twentieth century we¶ resisted them so strongly.

### CP Solvency – Codes Work

#### Anti-harassment codes allow for civil lawsuits which is key to solving harassment and rape – speech codes make freedom from harassment a civil right. Brodsky & Deutsch 15

Alexandra Brodsky is a law student at Yale. She is also an editor at Feministing and co-founder of Know Your IX, a national student campaign against campus sexual violence. Elizabeth Deutsch is a law student at Yale. Her writing has appeared in the New York Times, Politico, Bloomberg View, and other publications. She holds an MSc in Gender from the London School of Economics, where she was a Marshall Scholar, The Promise of Title IX: Sexual Violence and the Law, Fall 2015, Dissent Magazine EE

Ask any student organizing against campus rape what question he or she most often hears, and the answer will likely be: why are schools handling these cases at all? The clear legal answer is Title IX of the 1972 Education Amendments, which requires most schools to take active steps toward eliminating discrimination on the basis of sex, including preventing and responding to sexual harassment, so that students can continue to learn. What is truly puzzling then, is not the question itself, but the persistence with which it’s asked. When most people hear “rape,” they think “crime,” and only crime. This limit to our collective thinking about gender violence and what to do about it means that we overlook the distinction between criminal proceedings and the alternative that Title IX presents to students on campus. Instead of viewing school disciplinary proceedings for rape or harassment as failed attempts at criminal adjudication, we should understand them as means to a different end—to address sexual violence on campus as a civil rights issue. The widespread confusion about universities’ roles in dealing with sexual violence casts Title IX as an anomaly. While everyone else is stuck dealing with the police, students seem to have an extra option unavailable to others: they can report sexual violence using campus proceedings and federal agencies. Yet this account forgets that schools are not the only institutions required to combat sexual harassment and violence as a matter of civil rights. Title IX does not stand alone, nor do the students who wield it. The demands and strategies of Title IX activists build upon and parallel half a century of civil rights organizing for similar protections in the workplace. And looking back can help us understand why remedies outside criminal law are essential to keep communities safe and promote equality.

#### The text of the law is insufficient, campuses need specific enforcement mechanisms – they’re empirically effective. Brodsky & Deutsch 15

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Sexual harassment was rampant not only in New Haven workplaces but also on campus, said students, and it was holding women back. The same year that MacKinnon graduated from Yale, the young professor helped a group of its undergraduates file a suit against the school. One plaintiff, Ronni Alexander, had stopped playing the flute after her instructor harassed and eventually raped her. Another, Pamela Price, was presented the choice of an “A” in class in exchange for sex with her professor, or a “C” if she refused. But Yale provided no effective grievance process through which these students could complain. An environment that allows violence and harassment to take place in the absence of protections or remedies, Lisa Stone, another plaintiff, argued, deprives students of the “atmosphere necessary to . . . pursu[e] . . . a liberal education.” The court eventually dismissed the case on a technicality—all had graduated by the time the appeals court heard the case—but Alexander v. Yale nevertheless proved to be a remarkable victory. The court held that a school’s failure to adequately remedy sexual harassment could constitute sex discrimination prohibited by Title IX. Following the decision, Yale instituted a grievance board to hear complaints, and colleges across the country followed. While the Title IX suit MacKinnon led against Yale focused on sexual harassment by college professors, today’s student organizers have turned their attention primarily to abuse by fellow students and schools’ inadequate responses, including refusal of essential services and bungled disciplinary procedures. Despite this substantive pivot, these students rely on the legal mechanisms early Title IX advocates helped develop. Today, in a system roughly parallel to EEOC reporting, students can challenge their schools’ responses to sexual violence and harassment either in court or through a complaint to the Department of Education’s Office for Civil Rights (OCR). Complaints may be filed against a school and, if OCR finds the concerns compelling, it will launch an investigation into the college’s policies and practices, often visiting campus for interviews. Theoretically, OCR can find a school out of compliance and revoke all of its federal funding, devastating students in the process. In reality, most investigations conclude in what’s called a “voluntary resolution agreement,” in which a school agrees to policy changes and continued monitoring by OCR in order to avoid being found non-compliant. Sometimes, OCR may require specific remedies for student complainants who need emergency intervention to pursue their studies in the wake of violence. Students can also file law suits in federal court under the Title IX private right of action, much like workers can under Title VII (though workers must first file through the EEOC, whereas students may skip OCR and go straight to court). Lawsuits are arduous and public, but can provide one remedy a complaint cannot: monetary damages for the plaintiff. Of course, the law on its own does very little: simply prohibiting sexual harassment at work and at school isn’t enough. Meaningful enforcement has come only after years of worker and student organizing. In the early years of Title VII, labor groups worked both with and against the federal enforcement agency, the EEOC, to produce a regime with more teeth. As Yale graduate student Blake Emerson has argued, organizers collaborated with civil rights groups like the NAACP to file a flood of complaints that called on the government to enforce anti-discrimination law and simultaneously demonstrated the limits of its response. These organizers ultimately kept the EEOC from adopting a narrower mandate under Title VII.

### CP Solvency – Lawsuits Best

#### Title IX lawsuits are key to stopping harassment and rape – even if lawsuits fail, they drum up press and a singular victory is sufficient for institutional changes. Brodsky & Deutsch 15

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To be clear, on a strictly legal basis, these complaints and lawsuits have frequently failed. Even when organizers have pressed for enforcement of anti-discrimination law, the will of agencies to hold schools accountable for their violations fluctuates with administrations, and courts have often failed to take these concerns seriously. In a pair of cases, Gebser v. Lago Vista Independent School District and Davis v. Monroe County Board of Education, the Supreme Court announced a standard for university liability so high that it is almost impossible for student survivors to meet. Survivors must show that the school had “actual knowledge” of harm that is “severe and pervasive” (a higher threshold than would typically be required for third-party liability)—meaning, according to one court of appeals, that a single rape is not sufficient for consideration under Title IX. Employment case law, too, traces a history of under-enforcement and unsympathetic courts. As organizers agitated for change, judges pondered whether women wearing revealing clothes had been “asking” for unwanted sexual attention from supervisors, and referred to derogatory comments as “stray remarks.” In 2013, the Supreme Court further restricted employer liability by narrowing the definition of a “supervisor” for whose conduct a company is automatically responsible. Despite these obstacles, civil rights protections against sexual harassment, including rape and abuse, have been an essential tool for workers and students. Lawsuits and complaints often fail— but sometimes they win, and that possibility inspires both fear and action in employers and schools. Women and other groups targeted for harassment now take up more space and power in many industries as human resources departments not only seek to follow the law but also to internalize its values. University responses to gender violence, while still lacking, are undeniably improving. For individual victims, workplaces and schools can offer a range of remedies otherwise unavailable through criminal law, such as expulsion, termination, or suspension of wrongdoers; support and counseling services; and seemingly small but essential accommodations like desk changes, extensions on papers, and professor and supervisor reassignments. Even where the law has failed, it has drawn attention to and improved public understanding of the injustices suffered by victims of sexual harassment. Civil rights law makes a normative commitment that is respected, even when underenforced, and gives victims a vocabulary with which to voice their outrage. The year after Anita Hill’s famous testimony about harassment by Clarence Thomas, for example, sexual harassment complaints to the EEOC increased by 50 percent. The agency’s enforcement was still lax—this was, after all, the agency that conservative Thomas had led when he harassed Hill. But the flood of Title VII complaints after Hill’s testimony highlighted to the public that harassment was not “just life” but instead, a threat to workers’ civil rights, with all the ethical weight such a designation carries. Meanwhile Title IX (which has been less successful in the courts than Title VII) has perhaps served better as a symbol than a law—the broader principle that everyone, regardless of gender, should be able to learn without fear is harder to dismiss than the complaints or cases of individual students. As the understaffed OCR’s backlog grows, the deluge of complaints serves at once as an earnest request for enforcement and a public tally of continued harms inflicted upon students. Today, a Title IX complaint takes years to resolve, by which point the students who complained have often graduated. Yet filing such complaints offers an opportunity to articulate demands, garner publicity, and educate students about how they, too, can demand more of their university. For the last two years, students at campuses across the country have worn “IX” on their mortar boards at commencement ceremonies, often drawn with red duct tape, even when the law has failed to keep them safe.

#### Specifically speech codes are key, other Title IX and criminal violations fail to recognize emotional abuse and queer survivors – criminal law isn’t an option for many survivors. Brodsky & Deutsch 15

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Although discussed in silos, today’s student and worker movements against sexual harassment forcefully articulate the need for anti-discrimination law as a desperately needed complement or alternative to the criminal justice system. For many, a criminal trial isn’t even an option; but when it is, it’s also often inadequate. Anti-discrimination law prohibits a broader range of conduct than do state criminal codes, which sometimes fail to recognize forms of verbal and emotional abuse ranging from lewd comments in the workplace to psychological violence against an intimate partner. Further, abuse against many male and queer survivors, recognized under Title VII and Title IX, are essentially ignored by some criminal laws, which tend to presume female victims and male perpetrators. As Glatt notes, complainants and plaintiffs also have “more agency” in civil proceedings compared to victims in criminal cases. In criminal cases, prosecutors decide whether and how to far to go; the Rape, Abuse and Incest National Network (RAINN) shows that only 3 percent of rapes are prosecuted. As for those who have a shot at a day in criminal court, and particularly for survivors of color, the police are too often a source of violence rather than justice. Racial inequality, compounded by immigration status and poverty, the same factors that make workers or students vulnerable to sexual abuse in the first place, also render the criminal justice system inadequate or dangerous. Women of color are disproportionately subject to sexual violence at work, at school, and at the hands of the police. Tracy also explains that criminal responses are insufficient because many of the workers she organizes with are undocumented and fear the police. (And, unlike the Bill of Rights, criminal law won’t protect undocumented workers from retaliation by unhappy employers or immigration authorities.)

### CP Solvency – Accountability

#### Teachers currently get left off the hook because of overbroad university policies. The counterplan maintains academic freedom, but also holds teacher’s accountable. Woodward 99

Lisa Woodward 99 Copyright (c) 1999 by the Capital University Law Review Capital University Law Review, 1999, Capital University Law Review, 27 Cap. U.L. Rev. 667, 26891 words, COMMENT: COLLISION IN THE CLASSROOM: IS ACADEMIC FREEDOM A LICENSE FOR SEXUAL HARASSMENT?

¶ Academic freedom is the hallmark of higher education. It is essential that the classroom remain a marketplace of ideas. Academic freedom exists, however, to further teaching and research, not to impair it. It does not exist to give professors a "license" to create a sexually demeaning classroom environment. When faculty members violate the rights of students under the guise of academic freedom, appropriate discipline must be imposed by the university.¶ ¶ ¶ ¶ In balancing academic freedom with the students' right to a learning environment free from discrimination, three courts have attempted to reach decisions that adequately consider the competing interests of all of the parties. In Silva v. University of New Hampshire, the court used the Mt. Healthy 381 and Connick-Pickering 382 tests to determine whether the professor's classroom speech was constitutionally protected. This court gave great weight to the professor's academic freedom rights, essentially ignoring the professor's correlative duties, the students' rights, and the university's interests in providing a healthy learning environment. 383¶ ¶ ¶ ¶ In Cohen v. San Bernardino Valley College, the district court also applied the Connick-Pickering balancing test. 384 This court, however, gave much less deference to academic freedom. It found that, because the learning process was disrupted, the university had a legitimate interest in regulating the professor's classroom speech. 385 Although partially reversed on appeal because the school's sexual harassment policy was overbroad, 386 the Ninth Circuit did not disturb the district court's findings concerning the scope of protection to be given to classroom speech. 387¶ ¶ ¶ ¶ In Rubin v. Ikenberry, the district court adopted the Bishop balancing test. 388 Using the basic educational mission of the school as the central focus, the court then weighed the interest of the university in restricting Professor Rubin's speech rights against his right to academic freedom. 389 This approach seems adequately to take into account all of the competing [\*708] interests. Had the Silva court adopted this approach, the outcome may have been very different.¶ ¶ ¶ ¶ Whatever test a court chooses to employ to determine whether a professor's classroom speech is constitutionally protected, that test must give appropriate weight to the legal and ethical duties imposed on the university. Pursuant to Title IX, public colleges and universities have a legal duty to provide a learning environment free from discrimination on the basis of sex. This includes a duty to provide an environment free from sexual harassment. 390 Because a healthy learning environment is essential to academic success, universities also have an ethical duty to provide students with a classroom environment conducive to learning. When the learning process is disrupted, the mission of the school is thwarted and the university has a right to take appropriate action.¶ ¶ ¶ ¶ The test must also consider the professor's contractual andethical obligations. Professors have contractual duties to abide by the rules and regulations imposed by the institution. When these rules are violated, school officials should be able to impose appropriate discipline. In addition, professors have an ethical obligation to treat all students equally and with respect. Sexual harassment has a negative impact on the learning environment. It is wrong and should not be condoned, either directly or indirectly, by allowing professors to hide behind the shield of academic freedom.¶ ¶ ¶ ¶ Academic freedom is not absolute. As with anything else, with the privilege comes responsibility. When academic freedom is abused, and inappropriate teaching methods and discriminatory classroom conduct materially interfere with the basic educational mission of the university, the university should be given the right to impose reasonable discipline, unhampered by cries of academic freedom.

### A2 Chilling Effect

#### First amendment claims for harassment are the definition of opportunism, there is little constitutional or historical base for them and they justify arbitrary use of power – turns all their slippery slope offense. Marcus 08

Kenneth L. Marcus is the Lillie and Nathan Ackerman Chair in Equality and Justice in America at Baruch College of the City University of New York and Founding President of the Louis D. Brandeis Center for Human Rights under Law. “Higher Education, Harassment, and First Amendment Opportunism”, William and Mary Bill of Rights Journal, (2008)

The most difficult example of First Amendment opportunism-and the only one to which Schauer has devoted an entire article-is the way in which opponents of harassment sanctions have transformed harassment into a free-speech issue.52 Given the enormous volume of commentary on this issue over the last two decades, it is surprising to realize that harassing speech has only relatively recently been seen as First Amendment speech.53 During the early years of the development of harassment law, the use of words in the act of harassment, with few exceptions, no more implicated the First Amendment than did the use of words in "virtually every act of unlawful price-fixing, unlawful gambling, or unlawful securities fraud."54 Only a decade ago, the literature on this topic was charged with a "palpable absence" of engagement with First Amendment values.55 This is a significant change in that sexual harassment law was not subject to constitutional review during the earlier formative years of its development.56 In other words, it was not very long ago that the entire debate over First Amendment protection in this area was not even a part of First Amendment discourse.57 Shifting the terms of debate from harassment to the First Amendment has been an effective strategy for those who recognize that the First Amendment has significant rhetorical cachet and may trump other social values.5 8 In other words, it has been an effective form of First Amendment opportunism. Nevertheless, it remains unclear whether the Supreme Court would extend the boundaries of the First Amendment in this manner. Despite the frequency with which commentators now discuss the conflict between sexual harassment law and the First Amendment, the Supreme Court has not yet addressed the issue, and it has seldom been resolved even by the lower courts. Some commentators have argued that the Supreme Court does not consider sexual harassment to be within the coverage of the First Amendment, noting that the Court did not address the issue when it was squarely raised before it.59 Specifically, in Harris v. Forklift Systems, Inc., the Court silently passed over First Amendment defenses to a hostile environment sexual harassment case in which much of the offending conduct was verbal.' Professor Schauer has argued that the Court's silent avoidance of the First Amendment argument may be seen as a decisive rejection of the relevance-which is to say the coverage--of First Amendment claims in this context, precisely because those issues were not even addressed.6' Of course, even if sexual harassment claims in the workplace are not covered under the First Amendment (and a full discussion of this claim is beyond the scope of this Article), one might still argue that harassment claims are covered in higher education. Depending on the rationale for finding harassment is not covered in the workplace, it is at least arguable that the privileged status of free speech in academia requires a greater range of coverage in that area.62 This might, for instance, be the conclusion which one reaches through an institutional approach to First Amendment coverage.63 Certainly, higher education is frequently thought to be a forum in which First Amendment concerns have a heightened importance,' because the "classroom is peculiarly the 'marketplace of ideas."'6" The Supreme Court has long since held "that state colleges and universities are not enclaves immune from the sweep of the First Amendment." 66 On the orther hand, even undcr an irstizUtion0d analysis, the argument could go the other way. For instance, one could argue that students' interest in equal educational opportunities, not only in the public schools, but also in higher education, is of such central constitutional import as to trump the institution's speech values.67 A third position, recognizing that college campuses have attributes of both public fora and private homes, would be to provide heightened protections only in public campus spaces like lecture halls and not in residential areas.68 This micro-institutional approach may be unworkable in practice to the extent that it requires a case-by-case consideration of a multiplicity of environments. The institutional approach has its drawbacks, many of which are rooted in basic rule-of-law concerns. Carving up First Amendment coverage by institution requires the courts to make complicated, policy-laden, high-stakes, institution-by-institution determinations. In the meantime, legal uncertainty may foment excessive litigation and, worse, chill the exercise of legitimate, protected speech. Furthermore, it raises the prospect that the courts will privilege certain speakers based on institutional biases (including biases toward institutions with which judges have had personal associations). Even if their institutional determinations are free of bias, they may have the actual or perceived effect of providing unequal protection of laws (as when university professors appear to receive greater constitutional protections than those permitted to lesser mortals: quod licetjovi non licet bovi).69

#### Even a code that potentially chills some speech is better than not having any. Beverley and Cava 97

Beverly Earle\* [Associate Professor of Law, Bentley College, Waltham, MA. B.A. from the University of Pennsylvania, J.D. from Boston University School] and Anita Cava [Associate Professor of Business Law, University of Miami School of Business Administration. B.A. from Swarthmore College, J.D. from N.Y.U. School of Law] The Collision of Rights and a Search for Limits: Free Speech in the Academy and Freedom From Sexual Harassment on Campus. 18 Berkeley J. Emp. & Lab. L. 282, 1997

More reasoned and moderate criticisms emphasize that many codes are poorly drafted, vague, or overbroad. 4 When vagueness is combined with enforcement by poorly trained or overzealous administrators, it leads to prosecutions that are disproportionate to the underlying complained-of behavior and chills campus speech. 5 Other critics oppose all speech codes [\*99] and attempt to regulate verbal harassment on various grounds, including the need to uphold the marketplace of ideas and the claimed inherent ineffectiveness of codes. 6 Lately, some commentators decry many codes' emphasis on victimization. 7 Arguing that a focus on victim status deprives one of agency, these critics instead endorse self-reliance. 8 They believe that targets of harassment should assume the responsibility to respond individually to harassers. 9 Their opponents in turn reply that harassment policies can fortify victims' empowerment, giving them the necessary support to fight harassment. 10¶ Like many others, I approach the entire subject not only with a great deal of ambivalence, but also with some trepidation. When interests as potent as free speech and equality clash, the fallout can easily obscure the issues, generating more heat than light, as evidenced by recent media attention. 11 In this atmosphere, supporters of even limited regulation [\*100] become "censors," while opponents are not only "insensitive" but "reactionary."¶ More fundamentally, even after one manages to pick through the debris, a basic tension remains. Each side's arguments have not only a modicum of appeal, but some merit. 12 Encouraging the free expression of ideas and constant debate enhances creativity and diminishes misdirected suppression of dissidents. 13 On the other hand, giving free rein to bigots and bullies ultimately undermines the very academic atmosphere necessary to sustain creative debate. 14 Restraining group-based harassment also can foster multiculturalism. Permitting the suppression of disapproved speech, however, creates almost insurmountable problems of line-drawing and enforcement. 15 Further, imposing sanctions on certain speech can make martyrs of bigots. 16 As a result, the debate rages on, circling endlessly around itself. Its terms are by now well-rehearsed and even somewhat "shopworn," as one commentator recently observed. 17 [\*101] ¶ Notwithstanding the problematic nature of codes, however, I submit that a narrowly drafted, rationally enforced code prohibiting physical and certain verbal acts of racial, religious, and sexual harassment still can play an important role on campuses. 18 While personal insults and unwanted sexual advances constitute the majority of this harassment, in some instances codes also might address subtle, veiled attacks that apparently are not directed toward a particular individual. 19 Such limited codes, when enforced intelligently, can promote rather than stifle academic freedom for everyone in the community consonant with First Amendment principles. 20¶ I analyze sexual, racial, and religious harassment similarly because they are conceptually more alike than distinct. Such harassment may be mutually reinforcing in cases involving women of color, for example, who experience both racial and sexual harassment, with no clear boundary distinguishing the two. 21 Although sexual harassment often takes the [\*102] form of unwanted advances, 22 frequently it consists of the same type of repellent group-based attacks as those associated with racial, ethnic, and religious harassment. Moreover, harassing sexual advances generally are the product of a desire for power rather than a desire for sex. 23¶ Further, although policies and codes are problematic, 24 the lack of a policy is even more troublesome because it appears to counter harassing incidents with passivity. 25 Silence and inaction in the face of intimidating [\*103] behavior may imply condonation of misconduct. 26 Theoretically, one can counter harassing speech with more speech, but that is not a realistic avenue of redress for many victims who are figuratively beaten into submission and who withdraw or freeze in panic. 27¶ Accordingly, the balance between a code's potential to chill speech and the unwelcome environment enhanced by lack of prohibitions should be struck in favor of limited regulation. While academic freedom requires that individuals be permitted to speak their consciences, it does not shield harassment of and threats against specific individuals, 28 even when the offensive conduct takes subtle forms. Thus, academic freedom is not unbounded and absolute, but rather limited by notions of responsibility to other members of the community.

## U/Q

### Sexual Harassment

#### Title IX effectively holds institutions and people accountable for sexual assault through reform at universities across the country. Bricker 12.

Nora Caplan Bricker. “How Title IX Became Our Best Tool Against Sexual Harassment”. The New Republic. June 21, 2012. <https://newrepublic.com/article/104237/how-title-ix-became-our-best-tool-against-sexual-harassment>. AGM

Title IX remains a call to action and a crucial tool for those who believe schools need to take a harsher line on rape and sexual violence. When Vice President Joe Biden and Secretary of Education Arne Duncan issued updated guidelines for Title IX in 2010, they focused on grievance procedures for sexual assault, urging schools to crack down. The past few years have seen a slew of Title IX complaints seeking the reform of sexual grievance procedures—at, among others, Princeton, Duke, the University of Virginia, Harvard Law School, and, once again, Yale. The most recent investigation of Yale closed this month with “no findings of noncompliance,” according to Yale President Richard Levin—though, as one of the complainants pointed out in Slate, the university had to sign an agreement to maintain the new policies it implemented this year, and to keep a close eye on the campus climate and report regularly to OCR. This complaint at Yale was, in many ways, depressingly similar to the case that preceded it by over thirty years: It asked the university to take public displays of misogyny seriously, and to create better recourse for victims of sexual violence and harsher punishments for perpetrators. The echoes of Alexander v. Yale are a reminder of sexism’s insidious hold, and of the progress our society has yet to make. When I told Bayh about Title IX’s foundational role in sexual harassment law, he told me he doesn’t think “discrimination” is a strong enough term for sexual misconduct and violence. “That’s flat-out criminal activity,” he said. But because universities handle so many harassment and assault cases that occur between students in-house, classifying these crimes as discrimination has turned out to be an effective way to hold institutions accountable.

#### Current reforms are working; sexual assault at universities is on the decline, but there is still work to do. Gillespie 14.

Nick Gillespie. “BJS: Rate of Sexual Assault Shows Sharp Decline, Lower Among College-Age Women”. December 11, 2014. <http://reason.com/blog/2014/12/11/bjs-rate-of-sexual-assault-shows-sharp-d> AGM

As Sen. Kristen Gillibrand of New York has said, "Women are at a greater risk of sexual assault as soon as they step onto a college campus." This is simply not true, according to the latest figures on sexual assaults released by the Bureau of Justice Statistics (BJS). Surveying women between the ages of 18 and 24, BJS found that "The rate of rape and sexual assault was 1.2 times higher for nonstudents (7.6 per 1,000) than for students (6.1 per 1,000)." Other findings form the report include: For both college students and nonstudents, the offender was known to the victim in about 80% of rape and sexual assault victimizations. Most (51%) student rape and sexual assault victimizations occurred while the victim was pursuing leisure activities away from home, compared to nonstudents who were engaged in other activities at home (50%) when the victimization occurred. The offender had a weapon in about 1 in 10 rape and sexual assault victimizations against both students and nonstudents. Rape and sexual assault victimizations of students (80%) were more likely than nonstudent victimizations (67%) to go unreported to police. Until the numbers decline to zero, there is no such thing as "good news" in data about rape and sexual assault. However, the trends as measured by BJS are going in the right direction. Between 1997 and 2013, the rate of rape or sexual assault against women dropped by about 50 percent. Again, too high, but going in the right direction. The decline in the rate of sexual assault is part of a widely observed decline in violent crime more generally, which is down about 60 percent over the past 15 to 20 years

### A2 Trump Rollback

#### Trump’s actions won’t do anything – money and activist pressure check. Shatz 12/27/16

Naomi Shatz DECEMBER 27, 2016 <http://www.bostonlawyerblog.com/2016/12/27/will-trump-administration-change-anything-college-sexual-assault/>

In the last five years colleges and universities have set up sexual harassment adjudication procedures, including revamping their school policies, creating Title IX offices, and hiring Title IX coordinators, in order to meet the DOE’s guidelines, even when that meant going far beyond what Title IX and other federal statutes and regulations actually require. I do not think there is any question that DOE’s action in this area spurred those changes. However, I do not believe that if DOE stops pushing schools to demonstrate harsh responses to sexual misconduct allegations it will trigger a massive recalibration of schools’ approaches to handling those allegations. For one, schools have invested an [enormous](https://www.google.com/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8" \l "q=boom%20in%20college%20administrators%20title%20ix" \t "_blank) amount of money and time into creating massive Title IX bureaucracies to investigate and address sexual misconduct complaints. Now that those systems are in place, schools are not likely to dismantle them because of a change in administration. Perhaps more saliently, in the last three years or so a social movement criticizing and calling out schools that activists believe do not handle sexual assault complaints appropriately has gained in influence. The last thing any college wants is to be known as a school that does not take sexual assault seriously. Activists have done an impressive job of creating online (and in-person) protests when they believe a school (for example [Stanford](http://www.stanforddaily.com/2014/06/05/rape-survivor-demands-change-to-sexual-assault-policies/" \t "_blank), [Brown](http://www.browndailyherald.com/2014/04/23/u-mishandled-sexual-assault-case-victim-says/" \t "_blank), or [Columbia](http://www.nytimes.com/2015/05/29/magazine/have-we-learned-anything-from-the-columbia-rape-case.html?_r=0" \t "_blank)) has mishandled sexual assault complaints. Public perception, as much as fear of DOE investigation and potential withdrawal of federal funds (a potent threat DOE never carried out) drives schools’ sexual misconduct machinery and its tendency to eschew fair processes in favor of the accusing party.¶ Recently, though, even while the DOE and fear of negative publicity have put pressure on schools to set up systems that presume guilt when a complaint of sexual misconduct is made, and that deprive students (both complainant and accused) of access to hallmarks of traditional notions of fair proceedings, the courts have begun weighing in on what the law requires. In many cases, the courts’ decisions on the scope of Title IX, due process, contract law, and concepts of “basic fairness,” have required more procedural safeguards for students accused of misconduct and questioned the gender-neutrality of the current sexual misconduct systems. For example, as my colleague has previously discussed, the Second Circuit recently [allowed](http://www.bostonlawyerblog.com/2016/08/26/federal-appeals-court-opens-courthouse-door-title-ix-lawsuits-accused-students/" \t "_blank) a Title IX case by a male accused student to go forward, letting him make the argument that Columbia discriminated against him because of gender. The District Court of Massachusetts recently issued a [wide-ranging decision](http://www.bostonlawyerblog.com/2016/10/07/doe-v-brandeis-unique-decision-federal-judge-found-lack-basic-fairness-college-sexual-misconduct-proceedings/) criticizing most aspects of how Brandeis handled its sexual assault cases. A federal court in Ohio just [held](http://watchdog.wpengine.netdna-cdn.com/wp-content/blogs.dir/1/files/2016/12/judges-decision.pdf" \t "_blank) that students at public universities are entitled to cross-examine their accusers in sexual misconduct cases, and a California appellate court [found](http://cases.justia.com/california/court-of-appeal/2016-b262917.pdf?ts=1459881022" \t "_blank) that USC’s processes were unfair where it didn’t inform students of the factual allegations against them. These cases are beginning to form a cohesive body of law that outlines the contours of what legally acceptable sexual misconduct processes can look like.¶ The systems that were put in place because of schools’ fear of DOE investigation are not likely to go away, nor should they if we care about ensuring that students can receive their educations free from sexual harassment. But as those of us who represent students involved in these processes have long argued, when these systems were set up three to five years ago they frequently disregarded students’ rights in ways that were neither necessary nor appropriate for addressing sexual harassment on campus. Without DOE’s continued pressure, perhaps colleges and universities will have the freedom, and the incentive, to align their practices with what the law actually requires, as elucidated by the courts, and to build procedural fairness into their processes. In my own practice I have seen some moves towards fairer processes and outcomes, which I attribute both to the court decisions holding schools accountable for depriving students of due process and fundamental fairness, and perhaps a growing recognition that not every complaint states a violation of school policy or warrants disciplinary action rather than support services for the complaining student. Though this hope may be naive, if there is a silver lining to be found in the Trump administration’s likely disregard for both the DOE and sexual assault issues, it is that perhaps by removing the coercive power of the DOE from the equation schools and courts will be able to find appropriate ways to address and prevent sexual harassment while still upholding due process and fairness rights for those involved.

#### There’s too much social pressure and repeal isn’t possible – it’s federal civil rights law. Uffalussy 11/22/16

Jennifer Gerson Uffalussy [Contributor ] <http://www.teenvogue.com/story/donald-trump-presidency-sexual-assault-laws-campus>

While both Singh and Onyeka Crawford repeatedly emphasized that neither Title IX nor the Clery Act are under threat of repeal, there are still some questions remaining as the country, and survivors of sexual assault and their advocates, look ahead at the Trump administration.¶ “The question now is how robustly the Department of Education will enforce” both Title IX and the Clery Act, says Singh, pointing to the fact that historically, schools have not always fully complied with the laws, and faced scrutiny and investigation by the government as a result.¶ “The Obama administration has been incredible and supportive allies to hold schools accountable under Title IX. But student rights don’t stem from the action any administration takes, but from federal civil rights laws themselves,” says Singh.¶ Because of this, Singh says, students, activists, survivors, and allies must make clear “that we will be holding the Trump administration accountable if they try to go back to the days when schools flaunted students’ rights. We believe that the conversation around sexual assault on campuses has changed. Students are now coming forward to their schools and friends, both. There’s no putting that cat back in the bag. We have seen what our power is when we organize and we are not going to stop organizing.” Democratic Sen. Patty Murray, of Washington, also tells Teen Vogue that "all of us — schools, students, advocates, and elected officials — need to keep working together to build on this progress and end this serious threat to public health." She adds that "especially given the president-elect’s degrading comments about women, I urge him to reverse course and work with us to be part of the solution rather than the problem, and if he doesn’t, I’ll be ready hold to his administration accountable and stand up for survivors’ rights every step of the way.”¶

#### DeVos committed to upholding Title IX during her hearing. Watagwe 2/1

Wagatwe, 2-1-2017, "Betsy DeVos won't commit to listing the schools under Title IX investigation for mishandling rape," Daily Kos, <http://www.dailykos.com/story/2017/2/1/1628580/-Betsy-DeVos-declined-to-say-she-d-keep-listing-schools-under-investigation-for-violating-Title-IX> MG

Sen. Murray: Will you commit to holding schools accountable by continuing to publish the list of schools with Title IX investigations and hold schools accountable? DeVos: Yes, schools that violate civil rights statutes will be held accountable. But let’s be clear, we are a rule of law nation. Opening a complaint for investigation in no way implies that the Office for Civil Rights (OCR) has made a determination about the merits of the complaint. Any decision to release information must balance the desire for transparency with mechanisms needed to conduct an appropriate investigation. If confirmed, I look forward to discussing this with the OCR leader to understand how the release of information addresses its mission.

### Investigations Increasing

#### Title IX investigations are increasing. Kingiade 16.

Tyler Kingkade. “There Are Far More Title IX Investigations Of Colleges Than Most People Know”. Huffington Post. June 16, 2016. <http://www.huffingtonpost.com/entry/title-ix-investigations-sexual-harassment_us_575f4b0ee4b053d433061b3d> AGM

The growing backlog of federal Title IX investigations into colleges and universities has now topped 300, but many people, including students at the schools under scrutiny, aren’t aware of those reviews. As of Wednesday, there were 246 ongoing investigations by the U.S. Department of Education into how 195 colleges and universities handle sexual assault reports under the gender equity law. A Freedom of Information Act request by The Huffington Post revealed another 68 Title IX investigations into how 61 colleges handle sexual harassment cases. This puts the total number of Title IX investigations officially dealing with sexual harassment at 315. (Under civil rights statutes, sexual assault is defined as an extreme form of sexual harassment.) But dozens of those Title IX reviews receive no publicity because they don’t specifically deal with sexual assault. If a school is being investigated for allegedly mishandling harassment cases, but not reports of assault, it doesn’t appear on the list regularly given to reporters by the Education Department. Major educational institutions — including New York University, the University of Minnesota-Twin Cities, Georgia State University, Florida A&M University, Rutgers University, Howard University, the University of Oklahoma, Kent State University and the University of Wisconsin-La Crosse — have escaped public scrutiny because Title IX investigations into their actions haven’t been highlighted by the government or the schools themselves.SUNY Broome Community College is under three investigations that haven’t been previously disclosed. The Education Department has no plans to regularly issue a list of cases involving sexual harassment only, an official told HuffPost.

## Link

### Link – Yes Oppurtunism

#### AFF guts effectiveness of Title IX – it causes first amendment opportunism. Schauer 04

Schauer, Frederick [David and Mary Harrison Distinguished Professor of Law]. "The boundaries of the First Amendment: A preliminary exploration of constitutional salience." Harvard Law Review (2004): 1765-1809.

In addition to the properties of First Amendment claims that may¶ make them less likely to appear legally frivolous, the First Amend-¶ ment's magnetism may assist in ensuring that those claims will not¶ arise in isolation. There will often be multiple lawyers, multiple liti-¶ gants, and multiple public actors who perceive the virtues of the same¶ opportunistic strategy at roughly the same time, or who even may be¶ in active coordination with each other - as with the multiple chal-¶ lenges to the "Don't Ask, Don't Tell" policy, the proliferation of First¶ Amendment rhetoric surrounding legal arguments regarding computer¶ source code, and the panoply of parallel claims about First Amend-¶ ment limitations on copyright. When this is the case, the multiplicity¶ of individually tenuous claims may produce a cascade effect160 such¶ that the claims no longer appear tenuous. The combination of, say,¶ four scarcely plausible but simultaneous court challenges and twenty¶ scarcely plausible public claims of a First Amendment problem could make all these individually implausible claims seem more credible¶ than they actually are.161 From the standpoint of an interest group¶ seeking to achieve change and to mobilize public support or the sup-¶ port of other interest groups,162 winning is better than losing publicly,¶ but losing publicly is perhaps still preferable to being ignored.¶ Once the claim or argument achieves a critical mass of plausibility,¶ the game may be over. Even if individual courts reject the claim, the¶ multiplicity of now-plausible claims may give the issue what is re-¶ ferred to in inside-the-Beltway political jargon as "traction" and in¶ newsroom jargon as "legs." Interestingly, this phenomenon sometimes¶ survives even authoritative rejection of the claim. With respect to the¶ argument that hostile-environment sexual harassment enforcement has¶ serious First Amendment implications, for example, neither the Su-¶ preme Court's rejection of this argument in dicta in R.A. V v. City of¶ St. Paul163 nor the Court's silent dismissal of the same claim in Harris¶ v. Forklift Systems, Inc.164 has slowed the momentum of those who¶ would wage serious First Amendment battle against hostile-¶ environment sexual harassment law.'65 Similarly, decades of judicial¶ rejection of the argument that copyright law must be substantially re-¶ stricted by the commands of the First Amendment have scarcely dis-¶ couraged those who urge otherwise; and in some respects the Supreme¶ Court's recent decision in Eldred v. Ashcroftl66 can be considered not a¶ defeat, but rather one further step toward the entry of copyright into¶ the domain of the First Amendment: the Supreme Court did grant cer-¶ tiorari, in part to determine "whether ... the extension of existing and¶ future copyrights violates the First Amendment;"'67 and the seven-¶ Justice majority, as well as Justice Breyer in dissent,'68 acknowledged¶ that the First Amendment was not totally irrelevant.

#### The AFF explodes first amendment opportunism for harassment cases. **Marcus 08**

Kenneth Marcus, *Higher Education, Harassment, and First Amendment Opportunism*, William & Mary Bill of Rights Journal Vol 16 Issue 4, 2008. NS

In one classic article, Frederick Schauer famously identified the phenomenon of "First Amendment opportunism" as the use of First Amendment argumentation as a second-best justificatory device when the primary justification for a questioned course of conduct is legally unavailable. In other words, it is the opportunistic use of free speech doctrines by people and organizations who find that they lack other rhetorically or doctrinally effective means of achieving their goals. 39 In a useful metaphor, Professor Schauer likens First Amendment opportunism to the use of a pipe wrench to drive a nail into a board when one does not have a hammer.' ° It is a second-best device pressed into service for tasks to which it is poorly designed.4' Parties resort to the First Amendment in this way, and with considerable frequency, when "society has not given them the doctrinally or rhetorically effective argumentative tools they need to advance their goals. 42 By way of example, Schauer points to First Amendment arguments regarding false or aggressive advertising, nude dancing, and gays in the military (think "Don't Ask, Don't Tell").43 In each case, the First Amendment becomes the "pipe wrench" of legal and political argument in American culture, playing the role of "argumentative showstopper" that sacred text or abstract principles serve in others.44 In this way, Schauer argues, "political, social, cultural, ideological, economic, and moral claims. . . that appear to have no special philosophical or historical affinity with the First Amendment, find themselves transmogrified into First Amendment arguments.4 The phenomenon is notable because there may be no neutral principles to determine what conduct is First Amendment speech and what conduct is not.' Some speech is not covered under the First Amendment and some non-speech conduct is covered.47 Examples of speech not covered under the First Amendment include contractual terms, warranties, wills, product labels, securities representations, and certain competitive price information." Conversely, examples of non-speech that is covered under the First Amendment include dancing, mime, music, parades, armband protests, and flag-waving.49 The issue here is not whether the conduct is protected under the First Amendment but whether it is even covered. In other words, some forms of speech and conduct have historically been considered outside the ambit of First Amendment concern. Schauer has therefore identified as a principle feature of First Amendment jurisprudence that the initial inquiry of whether the Amendment's rules, standards, tests, and factors apply is quite distinct from the later inquiry of whether the conduct at issue is what one might in ordinary parlance de- scribe as "speech., 50 First Amendment opportunism consists of efforts to apply First Amendment principles outside of the context in which they have historically been applied in the service of goals that otherwise lack stronger justificatory support."' The most difficult example of First Amendment opportunism-and the only one to which Schauer has devoted an entire article-is the way in which opponents of harassment sanctions have transformed harassment into a free-speech issue.52 Given the enormous volume of commentary on this issue over the last two decades, it is surprising to realize that harassing speech has only relatively recently been seen as First Amendment speech.53 During the early years of the development of harassment law, the use of words in the act of harassment, with few exceptions, no more implicated the First Amendment than did the use of words in "virtually every act of unlawful price-fixing, unlawful gambling, or unlawful securities fraud."54 Only a decade ago, the literature on this topic was charged with a "palpable absence" of engagement with First Amendment values.55 This is a significant change in that sexual harassment law was not subject to constitutional review during the earlier formative years of its development.56 In other words, it was not very long ago that the entire debate over First Amendment protection in this area was not even a part of First Amendment discourse.57 Shifting the terms of debate from harassment to the First Amendment has been an effective strategy for those who recognize that the First Amendment has significant rhetorical cachet and may trump other social values. 8 In other words, it has been an effective form of First Amendment opportunism.

#### Expansion of free speech and academic freedom guts the effectiveness of law suits – AFF causes free speech opportunism. Gould 99

Gould, Jon [American University Professor Department of Justice, Law & Criminology¶ Additional Positions at AU¶ Director, Law & Social Sciences Program, National Science Program¶ Principal Investigator, Preventing Wrongful Convictions Project (2011-2014)¶ Affiliate Professor, Washington College of Law]. "Title ix in the classroom: Academic freedom and the power to harass." Duke J. Gender L. & Pol'y 6 (1999): 61.

My point here is not to challenge academic freedom but to urge that it be kept in perspective. Certainly, faculty and students deserve deference when engaged in scholarly expression. I, no less than others, am concerned about chilling academic interchange and the innovative ideas that can be created in an atmosphere of open dialogue. But my concern is that academic freedom has become, or at least is becoming, a defensive shield that discourages courts (and perhaps collegiate administrators) from enforcing equal opportunity requirements within academic life.¶ As an initial matter, the Eleventh Circuit reminds us that academic freedom is not an independent First Amendment right. 148 To the contrary, colleges may regulate expression where it materially disrupts classwork or other university activities or unduly interferes with the rights of others. 149 In fact, as Cass Sunstein notes, "Colleges and universities are often in the business of controlling speech, and their controls are hardly ever thought to raise free speech problems." 150 He adds:¶ ¶ There are major limits on what students can say in the classroom. For example, they cannot discuss the presidential election if the subject is math. The same is true for faculty members... The problem goes deeper. A paper or examination that goes far afield from the basic approach of the course can be penalized without offense to the First Amendment. 151¶ ¶ Sunstein's point seems to elude a number of courts and commentators, whose response is a blanket claim that the "prohibition of discriminatory speech which creates a hostile environment" may be applied in "employment, not educational, settings." 152 As they say, such restrictions are acceptable in the workplace because, unlike college campuses, "the First Amendment has no application" there. 153 The First Amendment protects "public discourse" - those "communicative processes necessary for the formation of public opinion." 154 By their very nature, universities are concerned with public discourse, but as the same commentators maintain, "speech in the workplace does not generally [\*78] constitute public discourse." 155 "Within the workplace... an image of dialogue among autonomous self-governing citizens would be patently out of place." 156¶ Yet this view fails to appreciate the expanding role of the workplace in public discourse and its similarities to the academy. "Communication contributing to public opinion is [hardly] limited to the press, handbillers on public streets, and fiery orators in the parks... For most citizens - who are not political activists - the great bulk of their discussion of political and social issues probably occurs in the home and the workplace." 157 Indeed,¶ ¶ the special import of speech in the workplace is crucially affected by the role of the workplace as an intermediate institution in the society. The workplace mediates between individuals and the society as a whole, and it affords a space in which individuals cultivate some of the values, habits, and traits that carry over to their roles as citizens. In the workplace individuals interact with others - initially strangers, often from diverse cultural, ethnic, political, and religious backgrounds - in a constructive way toward common aims. 158¶ ¶ If one did not know this passage's source, one might consider it to be from a college catalogue. Just as the workplace serves as an intermediate institution, so too the college campus brings together people of varied backgrounds to learn from and with each other. Open dialogue is important in each setting.¶ A critical reader may object to this point, unconvinced that the workplace and college campus share similar interests. After all, unlike the college student, an employee is paid to work, not converse. Moreover, the college campus is composed of several settings - classroom, dormitories, open fora - each of which demand different approaches by the First Amendment. Even if we accept the notion that the classroom and workplace share much in common, the Supreme Court has already ruled that a college campus, "at least for its students, possesses many of the characteristics of a public forum." 159¶ The criticism is well taken, for the similarities between the college campus and workplace are not absolute. That, however, should not dissuade our analysis. Much of this paper considers the courts' treatment of harassment on the shop floor and in the classroom, the two sites that are most comparable. In this respect, both Title VII and Title IX seek to prevent the same kind of harassment - speech so "serious or pervasive" that it impedes equal opportunity in the workplace or classroom.¶ Even if we consider other venues on campus, the analysis should not fail. If we move out of the classroom and into the dormitories, civility constraints are even more important. A student's dorm room is her home on campus, and the added privacy she deserves there includes protection against uninvited and offensive harassment. 160 Perhaps the only place on campus where harassment [\*79] policies would be inappropriate is the college public square, where students set up tables and soap boxes and debate the finer (and not so fine) points of the day. This I would concede is close to a public forum, a site no one need visit or remain. I certainly appreciate the perspective of those who argue a college campus cannot be a true public forum - that because the entire college serves an intermediate function civility constraints are appropriate even in the campus square. But we do not need to concern ourselves with this question because, as Silva and Cohen indicate, many of the courts that refuse to enforce hostile environment claims confine their analysis to classroom activities.¶ But if the workplace shares a quasi-public aspect with college campuses, how do we justify hostile environment restrictions in either setting? In fact, are we not trying to have it both ways? Under traditional First Amendment jurisprudence, both settings are either private forum, where expression may be more easily regulated, or the two are public sites where speech is presumed to be free and open. How does one justify hostile work environment in this situation, let alone collegiate harassment policies?¶ The answer, I think, may come from Cynthia Estlund, who herself borrows from Robert Post. To the extent that both the workplace and the college campus produce public discourse, "civility constraints" 161 are appropriate in each to prevent the type of poisoned attacks that destroy rational deliberation and the "possibility of constructive engagement." 162 Civility constraints are a set of ground rules that say open dialogue rests on an assumption of decorum, that effective learning or work is impossible in an atmosphere of personal attack. 163 As Estlund herself explains:¶ ¶ If we understand public discourse as speech that is relevant to the collective process of self-definition and decisionmaking, then civility constraints and the preconditions of rational deliberation seem to belong somewhere within the realm of public discourse... On this view, institutions such as schools and workplaces may be important sites for public discourse, though surely not of unbounded critical interaction. 164¶ ¶ Civility constraints also imply a certain level of equality in both the workplace and classroom. If both sites serve as mediating institutions, it is crucial that no group of workers or students (faculty or staff) receive special preferences or disparate treatment without a valid basis. Against this backdrop, some commentators have argued that the government's interest in workplace equality stands alone as a justification for punishing some harassment. 165 As they say, "speech that the speaker knows is offensive," that is directed at an employee be [\*80] cause of her sex, and that creates a hostile work environment may be restricted because it devalues the position of women in the workplace. 166 But again, it is entirely unclear why this rationale should not also extend to the classroom. As another commentators admits, "if the workplace context of offensive speech matters only because of the importance of equality in employment, then similar speech restrictions should be accepted in any sphere in which we could discern a strong commitment to equality, such as education...." 167 Indeed, the very basis of Title IX is gender equity in education. 168 Because "sexual harassment creates an inhospitable, and even abusive, educational environment for women... [it] functions in much the same way as overt exclusion to create a significant barrier to equal opportunity in education. The denial of women's educational equality sustains women's subordinate social and work status and subverts women's pursuit of autonomy." 169¶ Of course, one person's "civility constraint' is another's "viewpoint discrimination,' and many observers and courts instinctively flinch when hostile environment claims are applied to the college campus. 170 To be sure, there is precedent to fear censorship on campus. Apart from the McCarthy era, there have been cases in which university officials censored or expelled students because they deviated from "proper" values or beliefs. 171 And, of course, the fear of chilling speech is real, especially in an environment that prizes open dialogue.¶ But it is entirely possible to use sexual harassment law to forbid harassment in the classroom without touching other speech that is endemic to the educational mission. That higher education tolerates and encourages freedom of thought does not mean that we should hold off from punishing harassment in the classroom. In fact, harassment cases arise only infrequently and are unlikely to constrain meaningful discussion. 172 The terms of the claim insure this. By requiring that conduct be so "severe or pervasive" that it affects the educational environment, harassment law should screen out comments and behavior that are merely annoying, distasteful, or occur only once ore twice.¶ In the end, I believe academic freedom has become a straw man, obscuring the real explanation for the courts' - and many academicians' - diffidence over hostile environment claims in the academy: they don't want the responsibility of evaluating which speech is permissible and which comments are harassing. As a former college administrator I can certainly appreciate this concern, but it fails to relieve us of the responsibility of removing harassment from the academic environment. 173 The task is hardly different from other settings, where supervisors [\*81] have to distinguish between harmless expressions of opinion and those that actively discriminate. 174 If anything, the responsibility is greater in collegiate life, where " the Nation's youth are exposed to a multitude of ideas that will strongly influence their future development. To permit discrimination here would, more than in any other area, tend to promote misconceptions leading to future patterns of discrimination." 175¶ Professors and administrators may not think this is their duty, but they have been doing similar things for years. Just as teachers reprimand students for speaking out of turn or straying wildly off topic, so may college officials punish students or faculty who seek to harass members of the college community. 176 A similar point holds true for the courts. Just as they have allowed employers to discipline employees who harass co-workers, they must permit colleges to punish those faculty or students who interfere with the educational rights of others. Academic freedom is about education. When hostile behavior gets in the way of the educational process, academic freedom must give way to equal opportunity.

#### AFF prioritizing free speech means the first amendment gets used as a wedge issue to avoid harassment challenges. Schauer 00

Schauer, Frederick [Frederick Schauer is the David and Mary Harrison Distinguished Professor of Law at the University of Virginia and Frank Stanton Professor of the First Amendment at the Kennedy School of Government, Harvard University]. "The Speech-ing of Sexual Harassment." (2000).

But identifying Robinson as a turning point is only the beginning of the story. Robinson was undeniably¶ important, but it is also important to understand why Robinson became the case that inspired the ACLU, the case¶ that inspired the judge to take the First Amendment defenses seriously even if in the final analysis he did not accept¶ them, and the case that inspired a raft of commentators.¶ In answering this question, we are assisted in looking at some of the cases that preceded Robinson. And if¶ we look at these, we see the first suggestions of First Amendment issues in hostile environment cases in which part¶ of what created the hostile environment was the use of an item that would otherwise have been thought of, in other¶ contexts, as carrying the “aura” of the First Amendment. Whether it be the prisoner who claimed that his taunting of¶ a prison employer with a sexually explicit poem was protected by the First Amendment because the instrument of¶ taunting was a poem,26 or a range of cases in which pictures and magazines were at the center of the harassing¶ scenario,27 it is far from unreasonable to suppose that the impetus for First Amendment interest was an item that¶ would itself have been thought to trigger First Amendment thinking.¶ If this is right, then it explains the salience of Robinson. Robinson not only involved the presence of¶ words and pictures as the creators of the hostile environment in which Lois Robinson was compelled to work, but a¶ number of those pictures were centerfold nudes from Playboy and other similar magazines. And if there is anything¶ that prompts a reflexive reaction that the First Amendment is involved, it is Playboy. It is hyperbole to suggest that¶ the First Amendment would be raised as a defense if the driver of a delivery truck delivering copies of Playboy¶ negligently caused an accident, or if a rolled-up copy of Playboy was used to commit a battery - but not much.¶ We see the same phenomenon in a different version in a number of other hostile environment cases.¶ Because schools, colleges, and universities have traditionally been thought to be special First Amendment venues,¶ and because First Amendment-inspired claims of academic freedom are often used as a defense when otherwise¶ unexceptionable legal remedies are applied against schools, colleges, and universities,28 it should come as no¶ surprise to discover that when otherwise routine hostile environment claims arise or are suggested in the context of¶ educational institutions that First Amendment defenses that would not in different contexts be taken seriously are treated as having greater credibility.29 Thus, when faculty or students engage in verbal conduct that in different¶ workplace settings would not suggest First Amendment arguments, they have done just that when the setting is a¶ school, college, or university.30 As with a First Amendment “item” such as Playboy triggering otherwise distant¶ First Amendment argument and rhetoric in what appears to be non-First Amendment contexts, so too does a First¶ Amendment setting such as a school, college, or university appear to trigger otherwise distant First Amendment¶ argument and rhetoric in what would otherwise appear to be a non-First Amendment scenario.¶ My point, however, is not that the First Amendment is raised when some features of a setting appear, on the¶ basis of historical associations, to make the First Amendment relevant. This is true, and of some interest, but not¶ nearly as important as the subsequent emanations of the association. For once First Amendment items and First¶ Amendment settings have suggested that there is a relationship between hostile environment sexual harassment law¶ and the First Amendment, that suggestion, and that relationship, persists even in circumstances in which there is¶ neither a First Amendment item not a First Amendment context. In ways that were not apparent prior to Robinson¶ and prior to other cases in which First Amendment items and First Amendment settings planted the idea that hostile¶ environment sexual harassment was a First Amendment topic, after Robinson we saw First Amendment defenses¶ raised, and taken seriously, even when neither familiar First Amendment items nor familiar First Amendment¶ settings were present.31 The important historical point however, is that First Amendment associations, arising in¶ contexts in which some familiar First Amendment feature was present, then spilled over into contexts in which no¶ familiar feature was present, producing the consequence that situations that would have produced no First¶ Amendment interest a decade or more ago are now seen, for virtually the first time, as raising First Amendment¶ issues and justifying First Amendment defenses.¶ None of this is to deny Judith Resnik’s point that shifting the terrain of argument from the topic of¶ harassment to the topic of the First Amendment serves strategic and political purposes for those who are¶ uncomfortable with the substance of sexual harassment law and who recognize that First Amendment rhetoric has a¶ special political cachet in the United States, a cachet that allows free speech claims to trump equality claims when¶ the two are, or are perceived to, conflict.32 Nevertheless, changing the topic is only likely to appear plausible when¶ there is a familiar First Amendment hook available initially, although, as I have tried to show, combining the desire¶ t5o change the topic with the existence of a First Amendment hook will often produce a hange of topic that is¶ effective even after and when the hook is absent.

### Link UQ

#### Title IX is limiting the first amendment defense against harassment’s effectiveness now. **FIRE 16**

Foundation for Individual Rights in Education, Department of Justice: Title IX Requires Violating First Amendment, <https://www.thefire.org/department-of-justice-title-ix-requires-violating-first-amendment/>, 4/25/16. NS

The shockingly broad conception of sexual harassment mandated by DOJ all but guarantees that colleges and universities nationwide will subject students and faculty to months-long investigations—or worse—for protected speech. In recent years, unjust “sexual harassment” investigations into protected student and faculty speech have generated national headlines and widespread concern. Examples include: Northwestern University Professor Laura Kipnis was investigated for months for writing a newspaper article questioning “sexual paranoia” on campus and how Title IX investigations are conducted. Syracuse University law student Len Audaer was investigated for harassment for comedic articles he posted on a satirical law school blog patterned after The Onion. A female student at the University of Oregon was investigated and charged with harassment and four other charges for jokingly yelling “I hit it first” out a window at a couple. The Sun Star, a student newspaper at the University of Alaska Fairbanks, was investigated for nearly a year for an April Fools’ Day issue of the newspaper and for reporting on hateful messages posted to an anonymous “UAF Confessions” Facebook page. And just two weeks ago, a police officer at the University of Delaware ordered students to censor a “free speech ball”—put up as part of a demonstration in favor of free speech—because it had the word “penis” and an accompanying drawing on it, claiming that it could violate the university’s sexual misconduct policy. DOJ’s rationale would not just legitimize all of the above investigations—it would require campuses to either conduct such investigations routinely or face potential federal sanctions. This latest findings letter doubles down on the unconstitutional and controversial “blueprint” definition of sexual harassment jointly issued by DOJ and the Department of Education’s Office for Civil Rights in a May 2013 findings letter to the University of Montana. FIRE and other civil liberties advocates at the time warned that the controversial language threatens the free speech and academic freedom rights of students and faculty members.

### Link – Lack of code causes harassment

#### The plan is a diversion tactic away from the stories of survivors. Resnik 96

Resnik, Judith [Judith Resnik is the Arthur Liman Professor of Law at Yale Law School, where she teaches about federalism, procedure, courts, prisons, equality, and citizenship.¶ ]. "Changing the Topic." Law & Literature 8.2 (1996): 339-362.

Within the last decades, however, has emerged a story of cumulative experiences too frequent to deny. Women are slowly starting to reshape the prior version, to move from being the object of the gaze to reporting what women see, experience, and think - and to imagine alternatives. And slowly, women have begun to make their voices heard - in the acad- emy, in reported opinions of judges, in the shape and structure of deci- sion making.3 ¶ Those experiences have pushed law in this particular context to gen- erate something called a legal right against sexual harassment. This is, like all of law's reforms, by no means perfect. One finds the problematic incorporation of the mores of rape law and a focus on the victim of the harassment, as inquiries are made about whether the plaintiff"welcomed" the harassment,4 what she wore, whether her behavior was "ladylike," whether she willingly participated, whether she purposefully seduced, and the like.5 But nevertheless, there it is: women's law in the making. Judges and juries have found or upheld liability of employers and supervisors, and some institutions have altered their policies and practices to attend to the problems ofsexualized oppression within work places. Women might rightly celebrate a sense of place, of voice, of power. ¶ But now, in the second decade of this work, the tone is changing; other claims are being made about this body of law. One case serves as exemplary. A woman, Lois Robinson, alleged a Title VII violation, that she was discriminated against at work because she was a woman. Ms. Robinson was one of very few "female skilled craftsworkers;" that is, a woman welder.6 Over the ten years of her employment, she was promot- ed from "third class welder," to "second class welder," to "first class welder."7 While employed over those ten years, she also suffered a barrage of injuries. ¶ In the words of Howell W Melton, the federal judge who presided at the trial, "[p]ictures of nude and partially nude women appear through- out the [shipyard] in the form of magazines, plaques on the wall, pho- tographs torn from magazines," and by virtue of advertising calendars distributed by the company.8 In contrast, no pictures of male nudes were ¶ tolerated. (As one worker testified, were someone to have a picture of a¶ nude man, the worker would think that "son of a bitch" was "queer.")9¶ Further, the company denied requests to post "political materials, advertisements,¶ and commercial materials." 10 Indeed, "[b]ringing magazines¶ and newspapers on the job [was] prohibited" 11 -that is, except pornographic¶ magazines.¶ For the ten years in which she worked at the shipyards, Lois Robinson¶ was confronted with an array of incidents - such as finding explicit,¶ pornographic pictures by her locker, at her work station, or handed to her.¶ Some of the pictures were of white women, some black. She found graffiti¶ on her locker - vivid, sexual imagery, directed at or implicating her.¶ She suffered thousands of small and large verbal and sometimes physical¶ insults, as her co-workers pinched and grabbed her.¶ The district judge found more than a hundred facts, forming the¶ predicate for his judgment that Lois Robinson had been discriminated¶ against because she was a woman - and further, that the "sexualization¶ of the workplace imposes burdens on women that are not borne by¶ men." 12 Moreover, to reach his conclusion, Judge Melton decided that¶ "the objective standard asks whether a reasonable person of Robinson's¶ sex, that is, a reasonable woman, would perceive" the comments she¶ received to be abusive. 13 No longer did that judge believe the phrase "reasonable¶ person" without further specification captured the experiences to¶ which justice had to respond. 14¶ The Robinson case is important not only for its documentation of¶ horrid facts and its explicit incorporation of a woman's point of view in a¶ legal rule. It is also important because of the claim made by the defendant,¶ Jacksonville Shipyards, when it appealed the judgment. 15 One of the¶ grounds raised for overturning the decision was that the offensive behavior¶ was protected by constitutional guarantees of free speech. 16 For many¶ years, Title VII law had accrued with relatively little discussion of the fact¶ that (of course) Title VII affects speech, that Title VII regulates, limits,¶ indeed punishes some speech as well as some conduct in the workplace.¶ But in these last few years (as exemplified by the Jacksonville Shipyards'¶ defense and now that of other defendants in Title VII cases), a line of¶ argument against Title VII relies on free speech claims. 17 The effort to move the focus away from Lois Robinson and her legal¶ right to be free from sexual harassment to the question of free speech is not limited to Title VII cases. "Political correctness" is the phrase used as¶ an attack, when women of all colors and men of some colors bring up¶ problems of exclusion, of living with painful epithets, of being neither¶ heard nor read. 18 The argument advanced is that freedom of expressionor¶ great literature - is at stake, as if the excluded cultures were now so¶ powerful as to be able rapidly to undo accrued years of culture, tradition,¶ books, and legal rules.¶ Notice the change in the subject. For a few brief moments, I was¶ speaking about Lois Robinson and her struggles as a woman welder, and¶ about the vicious aggression that met her entry into the workplace. Now,¶ I'm speaking about speech. How did that happen? Why the switch in topics?¶ What's so appealing about a First Amendment conversation that it¶ can so readily reframe the discussion?¶ The First Amendment is attractive because it appears to offer neutrality.19¶ We (legal scholars) are also drawn to First Amendment discussions¶ because they are so familiar, so comfortable, so easy. We are, to be frank, in¶ a safe conversation. To borrow my friend and colleague Carolyn Heilbrun's¶ terms, this is a very familiar plot.20 Or as Annette Kolodny pointed out:¶ We read well, and with pleasure, what we already know¶ how to read; and what we know how to read is to a large¶ extent dependent upon what we have already read (works¶ from which we developed our expectations and our interpretative¶ strategies)/ 1¶ First Amendment conversations are deeply routine. We can quote¶ Holmes, or James Madison; we can invoke Nazi Germany or other totalitarian¶ regimes. Our metaphors are ready made, we know well the "marketplace¶ of ideas." We know the intellectual moves, about whether particular¶ terms are- or are not- "fighting words." 22 Has someone done the¶ equivalent of yelling "fire" in a crowded theater?23 Is this parody, comedy,¶ humor, political invective, literature or art?24 We know the boundaries; we¶ can be secure; we are not too likely to put our feet in our mouths.¶ The First Amendment is a distraction. The First Amendment offers¶ us a way in which we can feel some sense of engagement with contemporary¶ problems, yet keep them at a safe distance. We can be very busy (literally)¶ arguing actual cases, writing speech codes or inveighing against¶ them/5 debating and accusing- all the while cushioning the fact that we are actually at a loss for words (as well as of ideas) when confronted with¶ the stunning horror of the underlying stories.

### Link – yes conflicts with free speech

#### With enough precedent and support, the defense is unbeatable. They kill all challenges. Schauer 04

Schauer, Frederick [David and Mary Harrison Distinguished Professor of Law]. "The boundaries of the First Amendment: A preliminary exploration of constitutional salience." Harvard Law Review (2004): 1765-1809.

In important respects, the First Amendment appears to serve a¶ similar function in American society. To an extent unmatched in a¶ world that often views America's obsession with free speech as reflect-¶ ing an insensitive neglect of other important conflicting values,128 the¶ First Amendment, freedom of speech, and freedom of the press pro-¶ vide considerable rhetorical power and argumentative authority.129¶ The individual or group on the side of free speech often seems to be-¶ lieve, and often correctly, that it has secured the upper hand in public¶ debate. The First Amendment not only attracts attention, but also¶ strikes fear in the hearts of many who do not want to be seen as op-¶ posing the freedoms it enshrines.130¶ The reasons why the First Amendment has these effects are un-¶ doubtedly diverse and complex. One such reason might be that events¶ of dissent and protest, and thus of freedom of speech and press - the¶ Boston Tea Party, John Peter Zenger, Thomas Paine, John Brown, the¶ origins of the labor movement, and the civil rights movement in the¶ 1960s - have pride of place in the popular conception of American¶ history. Another might be the belief that the First Amendment was¶ first because it was most important, rather than because, as was actu-¶ ally the case, it moved from third to first after the first two amend-¶ ments failed to secure ratification.131 Still another might be the First¶ Amendment's essentially negative quality. Various constitutional val-¶ ues such as federalism, equality, and separation of powers have both positive and negative, policy and principle,132 dimensions. Freedom of¶ speech, however, while in theory definable both positively and nega-¶ tively, has in reality developed more negatively - understood to be at¶ its core about protecting against danger rather than about making¶ conditions better.133 Given that fears tend to be retransmitted more¶ than hopes, competition to claim the mantle of the First Amendment,¶ especially in a country where citizens may harbor more distrust of¶ government than most other places in the world,134 is predictably¶ fierce.¶ Such possible explanations for the First Amendment's magnetism¶ likely have at least some explanatory force, yet in the complex array of¶ reasons why the First Amendment has become one of the symbols that¶ opposing political forces fight to claim, a principal one is surely that¶ relying on the First Amendment is, not surprisingly, a good way of at-¶ tracting the attention and sympathy of the press.135 If, as the literature¶ on agenda-setting tells us, press attention is a major factor in moving¶ issues from the back burner to the front136 and in converting claim special interest into matters of public concern,137 then the shrewd in-¶ terest group'38 or public advocate will attempt to devise a strategy to¶ attract press attention. Accordingly, claiming the support of - or even¶ better, the presence of a threat to - the First Amendment is often a¶ wise course of action.139 Because the press is not nearly as disinter-¶ ested an observer of First Amendment controversies as it is of consti-¶ tutional issues involving due process, equal protection, federalism the rights of criminal defendants, for example, a First Amendment ar-¶ gument has a special resonance with the very people who substantially¶ influence which topics will become public

### Lawsuits Good

#### Validating harassment charges is key to fighting campus sexism. Nielsen 16

LAURA BETH NIELSEN [As both an educator and as an attorney Laura Beth Nielsen has spent her career working on the role of law in social change.]¶ 05/16/2016 SPACE, SPEECH, AND SUBORDINATION ON THE COLLEGE CAMPUS¶

And yet, feminists have made great strides in the past 50 years in changing how we think about relationships in the home as well as the bright line of public versus private that previous conceptions supported. The criminalization of marital rape, for example, fundamentally rejected the idea that uninterrupted consent to sex is part of being married and in the home. Similarly, the laws against and prosecution of domestic violence also represented an interrogation of the idea that the privacy of the home should not be breached even when bodily integrity (most typically of women, although targets of domestic violence can be of any gender) is at stake. The results of these hard-fought feminist movements mean that — while enforced imperfectly — simply being in the private space of a home or the institutional relationship of marriage does not render a woman unable to revoke consent to sex or to be abused.¶ Some scholars argued at the time (and a few still might) that laws against marital rape and domestic violence represent an erosion of some conception of privacy and property, but most Americans understand these laws as protecting a vision of liberty and bodily integrity that we can appropriately balance (with some struggle to be sure) in society and in courts.¶ In the workplace, we have seen a similar change. The establishment of sexual harassment as a cognizable claim of sex discrimination under the Civil Rights Act of 1964 means that consent to sex or sexualized activity is no longer just “part of the working conditions” that people (mostly women, although again, targets of sexual harassment in the workplace often include men and among male targets are disproportionately LGBTQ) face if they want to work. We know sexual harassment and discrimination remain rampant in the workplace and the legal treatment of it leaves something to be desired, but ordinary people’s expectations about freedom from workplace sexual harassment have changed dramatically in the last 20 years. My undergraduates at Northwestern University and public opinion polls demonstrate that most Americans understand that sexual harassment is a type of discrimination that the law has a legitimate role in prohibiting.¶ Like the “erosion” of property and privacy in the example of the home, some scholars thought (and a few still argue), that insofar as Title VII makes actionable “just” words, it is an infringement on private business interests or laissez fare capitalism. But Americans increasingly understand Title VII as advancing other important shared social goals of democracy, equality, and opportunity at work.¶ The policy driver here is a conception of “harm.” In other words, continually harassing an individual in the workplace is not just speech, it is do-ing something. It produces a harm and the harm is gender subordination. It is the harm of perpetuate-ing discrimination. Of create-ing inequality. The words can, in some circumstances, be do-ing discrimination by degrading white women, people of color, or gender non-conforming workers in ways that create inequality in pay and promotion for members of these traditionally disadvantaged groups.

#### Title 9 lawsuit victories are key to nationwide perception of the law’s importance and harassment reductions. **ACLU**

ACLU, TITLE IX AND SEXUAL VIOLENCE IN SCHOOLS, <https://www.aclu.org/title-ix-and-sexual-violence-schools>. NS

Title IX of the Education Amendments of 1972 is a federal civil rights law that prohibits discrimination on the basis of sex in any education program or activity that receives federal funding. Title IX is a powerful tool for students who want to combat sexual violence at school and on college campuses. Under Title IX, discrimination on the basis of sex can include sexual harassment, rape, and sexual assault. TITLE IX STATES: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." The Women’s Rights Project, in collaboration with Students Active For Ending Rape (SAFER) — a national nonprofit that empowers students to hold colleges accountable for sexual assault in their communities — has put together the fact sheet, podcast series, and other resources on this page to get the word out to student activists about how they can use Title IX as an effective tool for change. RESOURCES > Gender-Based Violence & Harassment: Your School, Your Rights Under the requirements of Title IX schools receiving federal funds have a legal obligation to protect students from gender-based violence and harassment – including sexual assault. Use this to find out more about schools’ obligations under Title IX and students’ rights. > Fact Sheet: Title IX and Sexual Assault: Know Your Rights and Your College's Responsibilities The Women’s Rights Project has participated in a number of court cases in which courts have taken important steps to hold schools accountable for ignoring sexual harassment or sexual assault that they knew about in school or on campus. > J.K. v. Arizona Board of Regents (02/26/2008) A federal court rejected Arizona State University’s (ASU) argument that it was not responsible under Title IX when a campus athlete raped a student, even though it had previously expelled the athelte for severe sexual harassment of multiple other women on campus. The case settled and ASU agreed to appoint a statewide Student Safety Coordinator who will review and reform policies for reporting and investigating incidents of sexual harassment and assault, and award the plaintiff $850,000 in damages and fees. > Simpson v. University of Colorado (08/24/2006) A federal court found that there was sufficient evidence to suggest that the University of Colorado (CU) acted with “deliberate indifference” with regard to students Lisa Simpson and Anne Gilmore, who were sexually assaulted by CU football players and recruits. The University settled the case and agreed to hire a new counselor for the Office of Victim’s Assistance, appoint an independent Title IX advisor, and pay $2.5 million in damages. > Fitzgerald v. Barnstable School Committee (08/29/2008) The United States Supreme Court held that public school students may challenge sex discrimination under both Title IX and the Constitution’s Equal Protection Clause. > Blog: Students Mobilize for Change During Sexual Assault Awareness Month (4/1/2009) Schools and colleges around the country are waking up to the power of Title IX to combat sexual violence on campus. School administrators can't afford to ignore Title IX. > Huffington Post: Ariela Migdal: Take Back Our Campuses (4/3/2008) April is Sexual Assault Awareness Month and students across the country are protesting sexual assault on campus by holding Take Back the Night rallies. > License to Thrive: 35 Years of Title IX (off-site) "There have been reforms and efforts to improve the climate for study for women in colleges and graduate programs through mechanisms like Title IX enforcement around sexual harassment issues. However, there is a lot of blockage in the system when it comes to women fulfilling their dreams. There are very high rates of sexual harassment reported by female students in colleges and universities and graduate programs as well as in elementary and secondary education."

#### Forces change in classroom culture Beverly and Cava 97

Beverly Earle\* [Associate Professor of Law, Bentley College, Waltham, MA. B.A. from the University of Pennsylvania, J.D. from Boston University School] and Anita Cava [Associate Professor of Business Law, University of Miami School of Business Administration. B.A. from Swarthmore College, J.D. from N.Y.U. School of Law] The Collision of Rights and a Search for Limits: Free Speech in the Academy and Freedom From Sexual Harassment on Campus. 18 Berkeley J. Emp. & Lab. L. 282, 1997

Adult students are not immune from harassment by professors. A woman with eleven years of experience in critical care nursing sued a school of nursing anesthesia and an instructor supervising her clinical program under Title VII and Title IX, alleging both hostile work environment and quid pro quo harassment. 133 Plaintiff alleged the instructor's behavior included unwelcome remarks, sexual innuendo and advances, public touching and humiliation resulting from insinuations about her sexual preference. After being admonished to stop by the school's administration, the instructor behaved as a "perfect gentleman" -- but gave plaintiff increasingly negative performance evaluations. 134 A series of negative evaluations culminated in plaintiff being dismissed from the program. These allegations [\*304] survived defendant's motion for summary judgment, but plaintiff's claim under the First Amendment did not. And, of course, an adult male student made national news with his threat to file a complaint for a hostile environment created by Professor Joanne Morrow's lecture on female sexuality at California State University in Sacramento. He argued that he felt "raped" by her graphic description of masturbation and her slides of female sexual organs. 135 Though there is no published resolution or decision in this matter, the professor may argue that because these events took place during a lecture and were arguably relevant, they are the most broadly protected under the banner of Academic Freedom and the First Amendment.¶ These cases reveal that universities have not been immune from the increasing national concern with sexual harassment issues. Title VII protections, sometimes filtered through Title IX, are being brought to bear as a weapon of change in the classroom and on campus. Academic discourse and professorial discretion are being challenged to conform to certain societal expectations, sparking a debate about how those standards of behavior can be balanced against protected classroom discussion. The cases concerning professor-student relationships discussed above shed light on the contours of the debate, separating in various ways the role of the professor in class, in demonstrations, and in the office. Any rational attempt to shape a model campus speech code would of necessity need to identify the differing requirements of these different roles and venues.

## Impacts

### Impact – Patriarchy/Moral

#### We need to challenge the way masculinity invades the everyday spaces we occupy – challenging harassment is key. **Cockburn 10**

Cockburn 10 – visiting professor at Department of Sociology at City University London, honorary professor in the Centre for the study of gender and women at University of Warwick, Women in Black against War, Women’s International League for Peace and Freedom (Cynthia, “Getting to Peace: what kind of movement” womeninblack.org, <http://www.womeninblack.org/old/files/OpenDemGettingtoPeace.pdf>)

Diana Francis, in the third of her series of articles, asks ‘what underlies war’s continuing widespread acceptance?’ This is a useful approach to the roots of war, in my view, because it opens up to questions about society, people, you and me, who are implicitly the ones to accept (or question, or refuse) war. It invites us to interrogate a film like Avatar, which is so characteristic of the culture we live in, the culture that enables, limits and shapes us. It leads to an exploration of the continuum of violence, the connections between the explosive violence of actual war, the perennial violence inherent in our militarized condition, and violence in everyday life and everyday culture. If Mary Kaldor is right (see her contribution to this debate, ‘Reconceptualizing War‘) in saying that wars are very often fought, not to be won but rather as a kind of mutual enterprise in which the warring parties share some benefits, this too must point us towards an examination of cultures. Some of the benefits that war-making people and classes gain from the perpetuation of armed conflict will certainly be economic. But some may be advantages in self-identity as men, or regard and status with regard to other people and groups. What messages are we taking in, telling each other, that make fighting, deliberate injury and killing, seem reasonable, desirable – even glorious? Avatar is just one of a zillion instances of cultural production that normalize and glorify fighting, militarization and war. And this violent culture in which we’re immersed is profoundly gendered, as Diana Francis, and Shelley Anderson in her recent article ‘Vital Peace Constituencies’, point out. Gendered mindsets, expectations, behaviours and attitudes feed and are fed by films like this, by video games, advertising, the fashion industry and TV reality shows, that bombard our consciousness day in and day out. Masculinity and femininity are endlessly constituted in idealized, contrasted and complementary forms that are parodies of real human ‘being’. We are made over as avatars fitted out for a virtual world in which each sex is a truncated, incomplete human being, a world in which he will survive violence and deal it out, while she will allure, invite and comply. The feminist women and pro-feminist men who resist such deformation are so marginal to the narrative they scarcely make the list of credits. And, unfortunately, this is no cinema fantasy but the very world we live in. Gender struggle in the peace movement One thing I have discovered during research in and among peace movements is that a gender struggle goes on in them too. The majority of organizations are mixed. They have many women in the membership, though frequently the leading personalities and spokes-persons are male. In most countries however there are a handful of feminist antiwar, antimilitarist and peace organizations. These are often differentiated from the mainstream peace movements of which they are a part, and to which they contribute, by one particular quality. While they don’t fail to pay attention to the large-scale issues and events that concern all peace movements – weapons of mass destruction, huge global military expenditures, the worldwide system of United States military bases, and so on – they simultaneously call attention to more mundane violence and the individual lives it affects, to pain, care and responsibility. For instance, Okinawan Women Act Against Military Violence (OWAMMV), like the rest of the Japanese peace movement, are concerned with the huge burden of the US bases that spread their razor wire all over the archipelago. But they also campaign against the abuse, rape and murder of individual women that is too often associated with the areas of bars and brothels surrounding these bases. OWAAMV’s first act on learning of a new assault, however, is always to check on the wellbeing of the victim before launching (yet another) mass protest against the system that has harmed her. Likewise, In South Korea, Women Making Peace are notable for having introduced into the movement a stress on ‘peace culture’, changing lives and practices, starting with one’s own. Which does not mean they don’t go out to join demonstrations against sending troops to Afghanistan or Iraq, or join in the campaign for the reunification of Korea. They do that too. After spending time with the women of many such organizations, and as a member, myself, of both Women in Black and the Women’s International League for Peace and Freedom, it seems to me that together we are introducing a fresh new thought into the field of international relations and war studies. We are saying: if the gendered cultures of violence in everyday life bring about ‘widespread acceptance of war’, then gender relations, as we know and live them, must be recognized as, in fact, causal in war. I have argued as much in an article appearing next month in the International Feminist Journal of Politics. A predisposing cause Most visible in the news analysis of any given war, of course, are economic factors (access to resources and markets). And yes, fair enough, capitalist expansionism and corporate interests certainly do motivate war-making governments and other social actors. Also visible, perhaps more hyped, in the conventional analysis are political factors. And, indeed, wars often are about the control or exclusion of particular kinds of people (the ones the wrong side of a border, the ones with the wrong god, or skin colour, or national name). Sometimes these two sets of motivations are summed up as ‘greed and grievance’, or ‘capitalism and nationalism’ or ‘class and race’. But the male power system (still widely called patriarchy, for lack of a better name) is intertwined with the capitalist mode of production and the nationstate system among the causes of war. As a source of cultures that produce sexual divisions – sexual divisions of labour, of war, of love – gender power relations ready us all the time for violence. They are a predisposing cause. Raewyn Connell, a well-known theoretician of masculinity and gender power, endorses this view. She writes that ‘masculinities are the forms in which many dynamics of violence take shape’. While the causes of war are many, therefore, and include ‘dispossession, poverty, greed, nationalism, racism, and other forms of inequality, bigotry and desire... Yet given the concentration of weapons and the practices of violence among men, gender patterns appear to be strategic’ 2. If gender relations are indeed one of the root causes of war, it follows that transformative change in gender relations must be part of the effort for peace. Gender work is peace work. This opens the door to men in the peace movement. To quote R.W.Connell once again, ‘Evidently, then, strategy for demilitarization and peace must include a strategy of change in masculinities. This is the new dimension in peace work which studies of men suggest: contesting the hegemony of masculinities which emphasise violence, confrontation and domination, and replacing them with patterns of masculinity more open to negotiation, cooperation and equality’. Men in the peace movement Men in the peace movement could step through that open door now and work on a critique of the manipulation of masculinity for militarism, making it a conscious part of their antiwar activism. They could say, as we wrote on our banner at the Women’s Gate of the Aldermaston Blockade a month ago, ‘No fists, no knives, no guns, no bombs. No to all violence’. Such a simple slogan links, in one giddy move, bedroom and battlefield, the violence of so-called peace and that of so-called war, in a single continuum. That is, I think, a concept with a perspective capable of inspiring a movement on a matching scale. War culture is hegemonic in our society. It’s the prevailing common-sense. The antiwar movement is, by comparison, patchy, disparate, and on some issues even divided. Parts of it focus on nuclear weapons, parts on the arms trade, parts on contemporary war-fighting. Its discourses include various kinds of socialism, pacifism, feminism – and those of various religions. These sectors and segments pull together on some issues, part company on others. To prevail over the taken-for granted militarism of the dominant culture I believe the movement has to follow the lead of organizations such as OWAAMV and Women Making Peace, and others like them in different countries, and allow a critique of gender to become a prompt to reinterpret and transform the peace movement, its aims, its structures and its own cultures. What is today a movement against war could become something wider and deeper, effectively a counter-hegemonic movement, a nonviolent movement for a nonviolent world.

#### And, diversity outweighs and turns the case – Chang 02

Chang, Mitchell J. "Perservation or Transformation: Where's the Real Educational Discourse on Diversity?." The Review of Higher Education 25.2 (2002): 125-140.

Historically, postsecondary institutions did not willingly embrace, let¶ alone collectively defend, diversity-related efforts. It took heavy-handed¶ intervention by the federal government to open wider the doors of higher¶ education to students of color. This change and subsequent institutional¶ alterations now considered under the rubric of diversity varied in the ease¶ with which different campuses implemented them; but it is fair to say that¶ much ongoing administrative resistance (Altbach, 1991; Olivas, 1993; Trent,¶ 1991a) and prolonged acrimonious debate (Levine, 1996) characterized the¶ typical campus dealing with diversity issues. Institutional conflicts typically¶ occurred because, as Hurtado (1996) observed, “These [diversity] issues¶ often required fundamental changes in premises and practices at many levels”¶ (p. 27), which, according to Chan (1989), threatened the very structure¶ of power both within and outside the university.¶ Because the diversity agenda and its related efforts seek to effect change¶ at almost all levels of higher education, it has been described as a “transformative¶ enterprise” (Nakanishi & Leong, 1978; Wei, 1993). In this view, diversity¶ initiatives are not simply innocuous extensions of preexisting¶ institutional interests but are instead efforts that challenge and seek to¶ transform traditional institutional practices and arrangements toward making¶ education more equitable, diverse, and inclusive, as well as more open¶ to alternative perspectives (Hirabayashi, 1997). Perhaps because the transformative¶ aims associated with diversity tend to challenge existing arrangements,¶ colleges and universities have not done all that they must do to¶ maximize the educational benefits associated with diversity (Allen, 1992;¶ Chang, 1999b). Hurtado (1996) held that “both resistance and change are¶ inevitable parts of the major transformation that is under way in the mission¶ of postsecondary institutions—a mission that includes diversity as a¶ key component” (p. 29). Therefore, she maintained, some tension and conflict¶ are likely at the level of deep institutional change in the history of individual¶ campus diversity efforts. In an educational setting, however, tension¶ and conflict are not necessarily problematic for learning (Gurin, 1999), unless¶ they prevent campuses from successfully implementing a multifaceted¶ approach to diversity.¶ Given that the transformative aims often clash with deep-seated institutional¶ assumptions and values, the educational benefits associated with diversity¶ emerge, more often than not, out of institutional transformation¶ and not out of preexisting ways of operating and behaving. In other words,¶ educational benefits for students emanate from changes that challenge prevailing¶ educational sensibilities and that enhance educational participation. Accordingly, retired Harvard professor Charles Willie pointed out in an interview¶ that the educational significance of diversity is best observed when¶ viewed as “the foundation for institutional change and self-correction” (qtd.¶ in Buchbinder, 1998) and not as an uncritical manifestation of preexisting¶ institutional values and ideals. As such, diversity calls into question not only¶ how learning is viewed and what is valued, but also how learning should be¶ assessed. In the next section, I will discuss further how the diversity agenda¶ seeks to transform higher education’s understanding of and impact on learning.

### Impact – Graduation rates

#### Title IX effectively increased female graduation rates. Bricker 12.

Nora Caplan Bricker. “How Title IX Became Our Best Tool Against Sexual Harassment”. The New Republic. June 21, 2012. <https://newrepublic.com/article/104237/how-title-ix-became-our-best-tool-against-sexual-harassment>. AGM

When former Indiana Senator Birch Bayh\* wrote Title IX forty years ago, his goal was very simple: to make sure women could get a good education. He wanted to force schools to accept women as students, let them into classes, and hire them as professors. And he wanted to make professions that require higher education accessible to women. As the law, which prohibits educational programs that take federal money from discriminating on the basis of sex, celebrates its fortieth birthday on Saturday, the changes Bayh was after have, to a stunning degree, happened—women have been earning more undergraduate degrees than men since 1996 and in 2009 overtook them in the attainment of doctoral degrees; 47 percent of legal degrees and 48 percent of medical degrees were conferred on women in 2010, compared to 7 percent and 9 percent, respectively, in 1972. Title IX has become most famous for ushering female athletes onto the playing field—an application of Bayh’s law that he told me didn’t cross his mind when he was defending it in the Senate.

### Impact – Competitiveness

#### Diversity key to competitiveness. Hyman and Jacobs ‘09

Jeremy S. Hyman – US News Contributor. Lynn F. Jacobs – US News Contributor. “Why Does Diversity Matter at College Anyway?” US News. August 12, 2009. <http://www.usnews.com/education/blogs/professors-guide/2009/08/12/why-does-diversity-matter-at-college-anyway> JJN

Henry Louis Gates Jr., President Barack Obama, and Police Sgt. James Crowley have certainly done their part to get race relations into the national discussion. But diversity is hot on college campuses, too—not only race, ethnicity, and gender but also religion, sexual orientation, socioeconomic status, and age. But why is diversity important in college at all? Visiting blogger Aaron Thompson, professor of sociology at Eastern Kentucky University and coauthor (with Joe Cuseo) of Diversity and the College Experience, offers eight reasons why diversity matters at college: 1. Diversity expands worldliness. College might be the first time you have had the opportunity to have real interaction with people from diverse groups. Whether we like it or not, many times we find ourselves segregated from other groups in schools, churches, and our own neighborhoods. A college campus is like opening the door to the entire world without traveling anywhere else. 2. Diversity enhances social development. Interacting with people from a variety of groups widens your social circle by expanding the pool of people with whom you can associate and develop relationships. Consider how boring your conversations would be if you only had friends who had everything in common with you. 3. Diversity prepares students for future career success. Successful performance in today's diverse workforce requires sensitivity to human differences and the ability to relate to people from different cultural backgrounds. America's workforce is more diverse than at any time in the nation's history, and the percentage of America's working-age population comprised of members of minority groups is expected to increase from 34 percent to 55 percent by 2050. 4. Diversity prepares students for work in a global society. No matter what profession you enter, you'll find yourself working with employers, employees, coworkers, customers and clients from diverse backgrounds—worldwide. By experiencing diversity in college, you are laying the groundwork to be comfortable working and interacting with a variety of individuals of all nationalities. 5. Interactions with people different from ourselves increase our knowledge base. Research consistently shows that we learn more from people who are different from us than we do from people who are similar to us. Just as you "think harder" when you encounter new material in a college course, you will do the same when you interact with a diverse group of people. 6. Diversity promotes creative thinking. Diversity expands your capacity for viewing issues or problems from multiple perspectives, angles, and vantage points. These diverse vantage points work to your advantage when you encounter new problems in different contexts and situations. Rather than viewing the world through a single-focus lens, you are able to expand your views and consider multiple options when making decisions and weighing issues of, for example, morality and ethics. 7. Diversity enhances self-awareness. Learning from people whose backgrounds and experiences differ from your own sharpens your self-knowledge and self-insight by allowing you to compare and contrast your life experiences with others whose life experiences differ sharply from your own. By being more self-aware, you are more capable of making informed decisions about your academic and professional future. 8. Diversity enriches the multiple perspectives developed by a liberal arts education. Diversity magnifies the power of a general education by helping to liberate you from the tunnel vision of an ethnocentric and egocentric viewpoint. By moving beyond yourself, you gain a panoramic perspective of the world around you and a more complete view of your place in it.

#### Loss of US competitiveness affects countries all around the world – causes widespread poverty. Porter and Rivkin ‘12

Michael E. Porter is a University Professor at Harvard, based at Harvard Business School in Boston. Jan W. Rivkin is the Bruce V. Rauner Professor at Harvard Business School. “The Looming Challenge to U.S. Competitiveness.” Harvard Business Review. March 2012. <https://hbr.org/2012/03/the-looming-challenge-to-us-competitiveness> JJN

The American economy is clearly struggling to recover from a recession of unusual depth and duration, as we are reminded nearly every day. But the United States also faces a less visible but more fundamental challenge: a series of underlying structural changes that could permanently impair America’s ability to maintain, much less raise, the living standards of its citizens. If government and business leaders react only to the downturn and fail to confront America’s deeper challenge, they will revive an economy with weak long-term prospects. During the past year, we have examined U.S. competitiveness with the help of a diverse group of scholars, business leaders from around the world, and the first-ever comprehensive survey of Harvard Business School alumni. Our research suggests that the U.S. faces serious challenges. Too often, America’s leaders, in government and business, have acted in ways that neutralize the country’s many strengths. However, the decline of U.S. competitiveness is far from inevitable. The United States remains the world’s most productive large economy and its largest market for sophisticated goods and services, which stimulates innovation and acts as a magnet for investment. To restore its competitiveness, America needs a long-term strategy. This will require numerous policy changes by government, which may seem unlikely with Washington gridlocked. However, many of the crucial steps can and must be carried out by states and regions, where many of the key drivers of competitiveness reside. More important, business leaders can and must play a far more proactive role in transforming competition and investing in local communities rather than being passive victims of public policy or hostages of misguided shareholders. What Is Competitiveness? America cannot address its economic prospects without a clear understanding of what we mean by competitiveness and how it shapes U.S. prosperity. The concept is widely misunderstood, with dangerous consequences for political discourse, policy, and corporate choices that are all too evident today. The United States is a competitive location to the extent that companies operating in the U.S. are able to compete successfully in the global economy while supporting high and rising living standards for the average American. (We thank Richard Vietor and Matthew Weinzierl for helping to articulate this definition.) A competitive location produces prosperity for both companies and citizens. Lower American wages do not boost U.S. competitiveness. Neither does a cheaper dollar. A weakened currency makes imports more expensive and discounts the price of American exports—in essence, it constitutes a national pay cut. Some steps that reduce firms’ short-term costs, then, actually work against the true competitiveness of the United States. Whether a nation is competitive hinges instead on its long-run productivity—that is, the value of goods and services produced per unit of human, capital, and natural resources. Only by improving their ability to transform inputs into valuable products and services can companies in a country prosper while supporting rising wages for citizens. Increasing productivity over the long run should be the central goal of economic policy. This requires a business environment that supports continual innovation in products, processes, and management. Boosting productivity over the short run by firing workers, as many U.S. firms did at the onset of the Great Recession in 2008, is a reflection not of competitiveness but of weakness. An economy in which many working-age citizens cannot find or do not even seek jobs may appear to enjoy high productivity in the short run, but in fact it has underlying competitiveness problems. It is a nation’s ability to generate high output per employable person—not per currently employed person—that reveals its true competitiveness. Improving competitiveness is not the same as creating jobs. Policy makers can stimulate employment in the short run by artificially boosting demand in labor-intensive local industries not exposed to international competition, such as construction. Creating jobs without improving productivity, however, will not result in sustainable employment that raises the nation’s standard of living. Rather than defining the sole goal as job creation, the U.S. must focus on becoming a more productive location, which will generate high-wage employment growth in America, attract foreign investment, and fuel sustainable growth in demand for local goods and services. Government efforts to stimulate demand are also different from improving competitiveness. Governments commonly play an important role by temporarily increasing outlays to soften the impact of recessions. Such moves may hold up living standards and company performance in the short run, but they typically don’t improve the fundamental drivers of productivity and therefore cannot improve living standards and company performance in the long run. American competitiveness is important not only for firms based or founded in the U.S. but also for foreign firms that operate in the country. Foreign firms contribute to U.S. prosperity if they bring productive activities to the U.S. that provide jobs at attractive wages. U.S. affiliates of foreign firms accounted for nearly 5% of U.S. private employment in 2009. Competitiveness is not a zero-sum game, in which one country can advance only if others lose. Long-term productivity—and, along with it, living standards—can improve in many countries. Global competition is not a fight for a fixed pool of demand; huge needs for improving living standards are waiting to be met around the world. Productivity improvements in one country create new demand for goods and services that firms in other countries can pursue. Greater productivity in, say, India can lead to higher wages and profits there, boosting demand for pharmaceuticals from New Jersey and software from Silicon Valley. Spreading innovation and productivity improvement allows global prosperity to grow. Because the global economy is not a zero-sum game, the decline of American competitiveness is a problem not only for the U.S. The global economy will be diminished if its largest national economy is weak, ceases to be an engine of innovation, and loses its influence in shaping a fair and open global trading system.

### Impact - Militarism

#### Best empirical evidence proves that even in democracies gender inequality is the root cause of war, militarism, famine, and poverty. **Chemaly 12**

Soraya Chemaly, Why everyday gender inequality could lead to our next war, Women Under Siege, 9/14/12, <http://www.womenundersiegeproject.org/blog/entry/why-everyday-gender-inequality-could-lead-to-our-next-war>. NS

What if I suggested that reducing the rates of rape and sexism in the U.S. would reduce our risk of international conflict? You might think that American girls and women who regularly adapt their lives to deal with “harmless” street harassment, or who are assaulted by American men, have little to do with, say, the Iraq War. Yet research shows an undeniable relationship between the treatment of women in everyday life and a nation’s propensity for engaging in war. Such is the conclusion of a fascinating book, Sex and World Peace, based on studies that spanned 10 years. The authors—Valerie M. Hudson, Bonnie Ballif-Spanvill, Mary Caprioli, and Chad F. Emmett—took the question, How does a nation’s security affect the status of its women? and flipped it: Does the status of women affect a nation’s security? Their results are startling in their power and clarity. According to the authors, the very best indicator and predictor of a state’s peacefulness is not wealth, military expenditures, or religion; the best predictor is how well its girls and women are treated. And before you start making exceptions for the U.S., think about this: Democracies with high levels of violence against women are as insecure and unstable as non-democracies. Whether a country is a democracy or not is irrelevant. Gender is the fundamental construct for how a society understands difference. Regardless of which state we are talking about, tolerance for street harassment, rape, domestic violence, and restrictions on reproductive freedom are among several indicators of gender inequality rooted in such difference. These behaviors correlate to state security in multiple dimensions. In the simplest terms, states in which women are subjected to violence and uncontested male rule at home, where they are not allowed equal freedoms and rights to bodily integrity, privacy, and equal protection under the law, are those most likely to engage in violence as nations, the authors report. Microaggression against women in private connects to macroaggressive national behavior. The larger a nation’s gender gap in equality between men and women or the more violently patriarchal their structures, the greater the likelihood that a nation will resort to force and violence in the form of aggressive nationalism. The book’s findings and conclusions are compellingly derived from the authors’ creation and use of the WomanStats database. Containing more than 130,000 datapoints, the database includes more than 375 variables for 175 countries, all of which have populations of at least 200,000 people. It is, according to its website, the most comprehensive bank of data on the status of women in the world today. During the course of 10 years, researchers used this resource to analyze various aspects of women’s live in areas such as domestic violence, maternal mortality, rape, and women’s political participation. The authors analyzed this broad spectrum of behaviors to rank women’s security on a scale of 0 (best) to 4 (worst). In addition to granular empirical analysis, the authors mapped these data to illustrate the distribution of violence against women geographically and to graphically illustrate the scope of the issues. Notably, when it came to the physical security of women, not one country received a zero. The average for the world, 3.04, demonstrates the nation-neutral, ubiquitous, and persistent fact of violence perpetrated against women for being women. The United States scored below the world average, receiving a 2 on this scale, but U.S. levels of rape, domestic abuse and spousal murder are still extremely high. Also notable is the correlation between the degree to which a state is weak in its women-protecting law enforcement and the degree to which the same state does not comply with international norms, treaties, and obligations. Like CEDAW. CEDAW—the Convention on the Elimination of All Forms of Discrimination against Women, is otherwise known as a global bill of rights for women. Among the many thoughtful recommendations the authors make is that countries adhere to the clear guidelines laid out in the convention. The United States cannot, however, follow this suggestion, since we are the only democracy in the world that is not a state party to CEDAW. The U.S. Senate has never ratified the convention and, without this ratification our country is not bound by its provisions. Do I even have to say why? Those in the United States who oppose it think it is a proxy for the Equal Rights Amendment that will undermine “traditional” family values and parental rights, encourage same-sex marriage, and dissolve the gender barriers on which their worldview is based. This is important because, regardless of nation, women’s inequality and the gender gap is vectored most effectively through adherence to complementary, gender hierarchical roles within families. As I’ve written about previously, conservative, fundamentalist Americans share this focus on hierarchical patriarchal family structure—where family “privacy” trumps a woman’s individual rights and freedoms—with conservative fundamentalists elsewhere in the world. Gender dynamics within the private, domestic sphere are directly related to the distribution of justice and rights within a society and how that society’s power is wielded on the world stage. When women remain prey to state-tolerated violence at home, their countries remain in the thrall of violence abroad. Yet even if for some reason you are not concerned with world conflict—or if your gender shields you from the direct effects of violence against women—listen up. As the Washington-based nonprofit Woodrow Wilson Center’s Kate Diamond explains in a post about Sex and World Peace, the authors also found that gender inequalities increase a nation’s risk of famine, poverty, disease, and poor governance. Meaning, no matter where you stand on the gender spectrum, or how worried you are about our next war, the harassment of women can still take away your health—or your next meal.

### Impact - Racism

#### Title IX stops racial discrimination – it’s key to women of color’s participation and educational advancement. **WSF**

WSF (Women’s Sports Foundation), RACE AND SPORT, <https://www.womenssportsfoundation.org/wp-content/uploads/2016/07/race-and-sport-the-womens-sports-foundation-position.pdf>. NS

II. HAS TITLE IX HELPED TO ADVANCE ATHLETIC OPPORTUNITIES FOR FEMALE ATHLETES OF COLOR? POSITION: Yes. Opportunities for female athletes of color have grown exponentially since the passage of Title IX. Since the passage of Title IX, athletic opportunities for female athletes of color have grown at double the rate of those for white female athletes. At the college level, for female athletes of color, there was a 95% increase in participation opportunities from 1971 to 2000 (2,137 to 22,541 participants, respectively).7 For white female athletes, there was a 320% increase in participation (27,840 to 116,918, respectively.) Scholarship assistance for female athletes of color has increased by 820% (from $100,000 to more than $82 million), while white females receive over $300 million in scholarship assistance. III. ARE FEMALE ATHLETES OF COLOR EQUALLY REPRESENTED IN SPORTS? POSITION: No. While there has been an obvious increase for women of color in athletics since the inception of Title IX, there is still work to be done in order to gain equal representation and opportunities in collegiate athletics. Female athletes of color remain underrepresented compared to their enrollment in the student body, and their participation is concentrated primarily in two sports.8 • Female athletes of color comprise 26.2% of the female student population, yet they receive only 17.5% of the total female athletic opportunities.9 Comparatively, white females comprise 68.5% of the female student population and receive 75% of the total female athletic opportunities. • African American female athletes are heavily concentrated in a limited number of sports, with close to 68% participating in two sports: basketball and track and field, compared to only 28% of white females participating in these same sports. There has been no change in this concentration phenomenon of African American female athletes in these sports from 1999-00 and 2005-06. Additionally, women of color are underrepresented in administrative and coaching positions in collegiate athletics.10 • 17% of college athletic directors are women, yet only 1.7% (15 out of 885) are women of color. • One third (34%) of senior administrative posts (associate and assistant athletic directors) are women, yet only 3.2 % are women of color. • Among coaches of women’s programs, 42.5% are women, yet only 4% are women of color. While female athletes of color remain underrepresented in regard to total participation opportunities, they are actually receiving a greater proportion of scholarship dollars than their white female athlete counterparts.11 • In 1999-2000, female athletes of color comprised 17.5% of all female athletes, but 19.3% of all female athlete scholarship recipients. • Male athletes of color comprised 20.6% of all male athletes but 32.6% of all male athlete scholarship recipients. IV. ARE MALE ATHLETES OF COLOR EQUALLY REPRESENTED IN SPORTS? POSITION: No. The underrepresentation of athletes of color is not just an issue for female athletes. Male athletes of color have yet to achieve equal representation and opportunities in all areas of athletics. Male athletes of color are proportionality represented compared to their enrollment in the student body, yet their participation is also concentrated primarily in two sports.12 • Male athletes of color comprise 22% of the male student population, and they receive 22% of the total male athletic opportunities. • Over 60% of the total male student-athletes of color compete in two sports: basketball and football, while only 28% of the total white male student athletes compete in basketball and football. Additionally, men of color are underrepresented in administrative and coaching positions in collegiate athletics.13 • Among college athletic directors, 81.7% are men, yet only 6.2% are men of color. • Nearly two-thirds (65%) of senior administrative posts (associate and assistant athletic directors) are men, yet only 6.1 % are men of color. • Just 8.8% of the coaches of men’s athletic programs are men of color. While male athletes of color are proportionality represented in regard to total participation opportunities, they are actually receiving a greater proportion of scholarship dollars than their white athlete counterparts.14 • Male athletes of color comprised 20.6% of all male athletes but 32.6% of all male athlete scholarship recipients. V. CAN TITLE IX BE USED TO ADVANCE ATHLETIC OPPORTUNITIES FOR WOMEN OF COLOR? POSITION: Yes. Title IX can be a vehicle to advance opportunities for women of color in sports. Title IX prohibits schools from discrimination on the basis of sex, not race. Title VI prohibits schools from discrimination on the basis of race. Therefore, legal challenges to practices of race discrimination in sport must be brought under Title VI, not Title IX. While Title IX does not provide legal protection on the basis of race, it can be part of the solution to creating more opportunities for women of color as a means to combating sex discrimination. Overall, women and girls continue to be underrepresented in athletics compared to men and boys; girls receive 1.3 million fewer participation opportunities than boys at the high school level and 86,305 fewer opportunities in college. As schools add more programs to address this gender participation gap, schools should give priority to adding those sports and creating opportunities that will also increase the representation of women of color. For example, the New York City schools recently added double dutch as a varsity sport. As a sport with high participation rates for athletes of color, particularly among girls, this addition will help expand opportunities for girls and improve diversity in competitive athletics.

#### Outweighs - increasing educational diversity is key to solve systemic racism – it lessens overall societal bias and increases minority success in the work force long term. **Kerby 12**

Sophia Kerby, 10 Reasons Why We Need Diversity on College Campuses, Americanprogress.org, 10/9/12, <https://www.americanprogress.org/issues/race/news/2012/10/09/41004/10-reasons-why-we-need-diversity-on-college-campuses/>. NS

Here are 10 reasons why diversity on college campuses is crucial for all students. 1. Our nation is changing, and our higher education institutions need to reflect this diversity. More than half of all U.S. babies today are people of color, and by 2050 our nation will have no clear racial or ethnic majority. Communities of color are tomorrow’s leaders, and we need to better prepare our future workforce. 2. While communities of color have made great strides in closing the education gap, disparities in higher education remain prevalent. According to the U.S. Census Bureau, in 2009 about 28 percent of Americans older than 25 years of age had a four-year college degree. That same year only 17 percent of African Americans and 13 percent for Hispanics had a four-year degree. 3. It’s in our national interest to invest in our future workforce. People of color today make up about 36 percent of the workforce. According to Census Bureau projections, by 2050 one in two workers will be a person of color. As our nation becomes more diverse, so too does our workforce. 4. Diversity in the workforce fosters innovation and competitiveness in business. Studies consistently show that diversity drives innovation and fosters creativity. In a Forbes survey, 85 percent of respondents said diversity is crucial for their businesses, and approximately 75 percent indicated that their companies will put more focus during the next three years to leverage diversity to achieve their business goals. 5. Fortune 500 companies agree that diversity is good for the bottom line. More than 60 leading 500 Fortune companies—including Coca-Cola, General Electric, Hewlett-Packard, Intel, Johnson & Johnson, and many others—came out in support of race-based admission policies in an amicus brief to the Supreme Court in the Grutter v. Bollinger ruling. 6. Diversity is a national security issue. In the past, our U.S. armed forces have argued that a highly qualified and racially diverse officer corps is essential to the military’s ability to provide national security. A top Army personnel official states that, “Diversity adds to the strength of the military as a force.” In Grutter v.Bollinger a number of high-ranking officers and civilian leaders of the Army, Navy, Air Force, and Marine Corps urged the Court to uphold the limited consideration of race. 7. Diversity on campus benefits all students. Diversity on college campuses isn’t just a benefit for the brown and black students. Learning with people from a variety of backgrounds encourages collaboration and fosters innovation, thereby benefitting all students. Research shows that the overall academic and social effects of increased racial diversity on campus are likely to be positive, ranging from higher levels of academic achievement to the improvement of near- and long-term intergroup relations. 8. The implications of race-neutral policies in educational opportunities are detrimental to the next generation. Admission polices that do not consider race are predicted to decrease representation of students of color at the most selective four-year institutions by 10 percent. Given that our future workforce is projected to be nearly half people of color, it is necessary that universities create a fair process for expanding opportunities to all students. 9. Research show that race-neutral polices simply don’t work. Scholars have already debunked the myth that a class-based admission system is an adequate replacement for a race-based admission policy as a means of creating greater levels of diversity. A study conducted by the University of California, Los Angeles, School of Law found that after using a class-based admission system, enrollment of African Americans and American Indians fell by more than 70 percent. A wide breadth of research concludes that race-conscious practices are necessary in some capacity to achieve a level of diversity that encompasses our diverse nation. 10. The majority of Americans support race-conscious policies in higher education. A CBS News/New York Times poll in 2009 shows that the majority of Americans are in favor of promoting diversity on college campuses through race-conscious policies—including the Asian American population, a group that is inaccurately speculated to benefit from the ban of such practices. An Asian American Legal Defense and Education Fund poll found that 75 percent of Asian Americans voters in Michigan rejected Michigan’s Proposition 2, a 2006 state referendum seeking to ban race-conscious policies. As our nation becomes more diverse, it is crucial that institutions of higher education reflect this diversity. Our growing communities of color are America’s future, and it is important that we not only prepare people of color as future leaders, but that we also expose all students to diversity in education so that America’s students are more competitive in an increasingly global economy.

### Impact - Neolib

#### Patriarchy relegates women to lower paying jobs and the domestic sphere which is a necessary precondition for oppression by capitalism. **Comanne 1/30**

Denise Comanne, How Patriarchy and Capitalism Combine to Aggravate the Oppression of Women, cadtm.org, 1/30/2017, http://www.cadtm.org/How-Patriarchy-and-Capitalism

The issue of women’s domestic work in the private sphere is thus central to any analysis of their situation. The capitalist system’s propensity to reorganise the economy on a global scale to its own profit has direct repercussions on gender relations. Analysis of its methods shows that, on the one hand, the capitalist system feeds on a pre-existing system of oppression – patriarchy – and on the other, it compounds many of its defining characteristics. The oppression of women is a tool which enables capitalists to manage the entire workforce to their own profit. It also enables them to justify their policies when they find it more profitable to shift the responsibility for social welfare from the State and collective institutions to the “privacy” of the family. In other words, when the capitalists need extra labour, they call upon women whom they pay less than men, which has the side-effect of dragging down wages generally. This means that the State is forced to provide services to facilitate women’s jobs or allow them to offload some of their responsibilities. Then when they no longer require women’s labour, they send them home, back to their “proper place” in patriarchal terms. There is not yet a country in the world, even among the most advanced in this area, where women’s pay is equal to men’s. Indeed some industrialized countries are seriously losing ground in comparative terms of human development, regarding this criterion: Canada has slipped back from the 1st to the 9th place in world ranking, Luxemburg has fallen back twelve places, the Netherlands sixteen and Spain twenty-six (UNDP, 1995). Careers where women are in the majority in fields such as health care and education are devalued. When capitalism is in crisis, austerity measures are introduced whereby women are the first to be excluded from social benefits such as unemployment benefits, for example, where they exist. Elsewhere, they are pushed into very poorly-paid jobs such as work in the free zones. In Mexico in this sector women’s salaries have collapsed from 80% to a mere 57% of men’s. They may also be won over by the idea of doing a good job for a pittance among the multitude of jobs in the informal sector, beyond the pale of “paralysing ” State regulations. Women’s rights in the workplace are undermined by a thousand government tricks. There is of course the “choice” of working part-time which extends from half-time to the “zero” contract where the female worker remains at the boss’s disposal to work from zero to any number of hours as required; this despite the fact that practically all surveys show that the majority of working women would like a full-time job. The increasing reduction in services such as crèches and day-nurseries, or the privatisation of others such as rest-homes for the elderly, have led to a multiplicity of pitfalls for working women. “Equality at work” has had the negative effect of introducing more night-work for women. Of course it was right to establish equal working conditions for women in the security and health services, and so forth; but what was also at stake with these so-called egalitarian measures was to allow women to work on the line in night-shifts, for example. There is absolutely no vital imperative to build cars at night. The new measures establishing male-female equality should then have been – in clear-thinking feminist terms – to eliminate night-work for men. Moreover, for most women this night-work on the line, unacceptable on principle, makes life intolerably hard most of the time, in view of the work women still have to do in the domestic sphere. The issue of women’s work in production, or the public sphere, is therefore just as central. To manage this issue, capitalism uses patriarchy as a lever to attain its objectives, while at the same time reinforcing it. The fact that women are relegated – by patriarchy – to domestic tasks allows capitalists to justify their over-exploitation and under-payment of women with the argument that their work is less productive than men’s. They invoke weakness, menstruation, absenteeism for pregnancy and maternity leave, breastfeeding, and caring for sick children and older relatives. This is where the woman’s salary is denigrated as being “for extras”. Even today, with equal qualifications and for equal hours, women are paid about 20% less than men. This holds a double interest for capitalists. On the one hand, they have a cheaper, more flexible labour pool that can be used or laid off according to market fluctuations; on the other hand, this enables them to bring down rates of pay generally. The general issue of women’s work in the private and public spheres thus reflects either their oppression, as for example when policies of the far right or religious fundamentalism force them to remain in the home; or their liberation, as in the case of progressive policies of equal pay, job creation and free public services. Having duly noted the importance of domestic work, the feminist current “class struggle” gives the following analysis. The oppression of women preceded capitalism but the latter has profoundly modified it.

### Impact – Probability First